

1969

- Dec. 9 Filed Motion to intervene under Rule 24 FRCP of Southern Pacific Transportation Co.
- 9 Filed Motion to intervene as deft by Union Pacific Railroad Co.
- 9 Filed Answer of Union Pacific Railroad Company, Intervenor.
- 9 Filed Motion to intervene as deft (Spokane, Portland & Seattle Railway Co.) (3 copies recd 1-8).
- 10 Filed Motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. for leave to intervene. Filed affidavit of service of above motion.
- 10 Filed and Entered Order permitting Chicago, Milwaukee, St. Paul and Pacific as pltf Railroad Co. leave to intervene.
- 10 Filed Complaint in intervention of Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
- 10 Filed and Entered Order allowing intervention of Southern Pacific Transportation Co. as pltf.
- 10 Filed Complaint of Southern Pacific Transportation Co.
- 10 Filed and Entered Order (on Motion) allowing Union Pacific Railroad Co. to intervene.
- 10 Filed Union Pacific Railroad Co.'s Memorandum in opposition to motion for temporary restraining order.
- 10 Filed Order allowing intervention of Spokane, Portland & Seattle Railway Co.

1969

- 10 Entered Order that Mr. Warren H. Ploeger, Seattle, Washington, be permitted to appear specially in this case on behalf of deft Chicago, Milwaukee, St. Paul & Pacific RR Co.
- 10 Record of pltf's motion for temporary restraining order.
- 10 Entered Order postponing motion until after Dec. 15, 1969 or such time as a hearing and determination is made in this case.
- 10 Entered Order that case be tried on the merits.
- 10 BRIEFING SCHEDULE: pltf's 30 days after Govt files its answer; defts 30 days to reply, and pltf's fifteen days after defts file replies.
- 11 Filed Answer of Intervenor, Spokane, Portland, & Seattle Railway Co.
- 16 Filed and Entered Notification and Certificate of designation of three-judge case (12/15/69).
- 18 Filed Complaint of Intervenor-pltf Southern Pacific Transportation Co.
- 29 Filed and Entered Order designating United States Circuit Judge and United States District Judges pursuant to §§ 2284 and 2325, Title 28, United States Code (12/24/69).

1970

- Jan. 6 Filed Answer of Intervenor-def't Spokane, Portland and Seattle Railway Company to Complaint of intervenor-pltf, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (with two copies).
- 6 Filed Answer of intervenor-def't, Spokane, Portland and Seattle Railway Company to complaint of intervenor-pltf, Southern Pacific Transportation Company (with three copies).
- 7 Filed Answer of intervenor-def't, Union Pacific Railroad Co. to complaint of intervenor-pltf Southern Pacific Transportation Co. (with three copies).
- 7 Filed answer of intervenor-def't Union Pacific Railroad Co. to complaint of intervenor-plt Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (with three copies).
- 28 Filed Answer of the USA with three copies.
- 28 Filed Answer of the USA to complaint in intervention of Chicago, Milwaukee, St. Paul and Pacific Railroad Company with three copies.
- 28 Filed Answer of USA to complaint in intervention of Southern Pacific Transportation Company with three copies.
- 28 Filed Answer of the ICC with three copies.
- 28 Filed answer of the ICC to complaint in intervention of Chicago, Milwaukee St. Paul and Pacific Railroad Company with three copies.

1970

- 28 Filed Answer of the ICC to complaint of intervenor-~~ptf~~ Southern Pacific Transportation Company with three copies (all copies delivered this date).
- 29 Filed ~~ptf's~~ (The Commission of Public Docks of the City of Portland) motion to dismiss as to the Commission as party ~~ptf~~.
- 29 Filed Summons with marshal's return.
- Feb. 25 Lodged Brief of ~~ptf~~ Public Utility Commissioner of Oregon with three copies (cert copies delivered to Judges)—this date.
- 26 Filed Opening Brief of Southern Pacific Transportation Company with three copies (cert copies delivered this date).
- 27 Filed Opening brief of Chicago, Milwaukee, St. Paul and Pacific Railroad Company with three copies (cert copies delivered this date).
- 27 Filed Brief for the Port of Portland, ~~Pltf~~ (cert copies delivered 3/2/70).
- 27 Filed Affidavit of Service (copies-cert-delivered 3/2/70).
- March 2 Filed Brief of ~~Deft~~ United States of America (cert copies delivered this date).
- 12 Filed and Entered Order (on stipulation) that debts have to and including April 29, 1970, to file their answering briefs (3/11/70).
- 12 Filed ORDER (letter) that hearing be postponed until June 22, 1970 at 1:30 p. m. (3/11/70).

1970

- 23 Filed Stipulation *re* record to be certified to District Court (Copies forthcoming).
- April 2 Filed and Entered Order (on motion) that Brotherhood of Locomotive Engineers, a labor organization, may intervene as a deft (4/22/70) (cert copies delivered 4/23/70).
- April 6 Filed True CERTIFIED Copies of Complete Record of Hearing before the Interstate Commerce Commission (Finance Docket 24679) BLUE BOX IN VAULT H-4 in the following volumes:
- Vol. I Brief Dated June 14, 1968.
 - Vol. II Documents filed with Interstate Commerce Commission.
 - Vol. III “
 - Vol. IV Stenographer's Notes of Hearing Held February 29, March 1, 1968.
 - Vol. V Stenographer's Notes on Hearing Held February 26, 27, 28, 1968.
 - Vol. VI Exhibits Numbers 1 thru' 29, 31, 32, 34 thru' 62 filed at Hearing Held February 26, 27, 28, 29 and March 1, 1968.
 - Vol. VII Exhibit Number 30 (rejected) at Hearing Held March 1, 1968.
 - Vol. VIII Exhibit Number 33 (rejected) at Hearing Held February 28, 1968.

1970

28 Filed and Entered Order (on Stipulation) that defts have extension of time to file Briefs: defts have to and including May 6, 1970, to file Answering Briefs; pltf have from May 14 to May 21, 1970, to file reply briefs

28 Filed and Entered Order that defts have to and including May 6, 1970, to file answering briefs and Pltfs have to and including May 21, 1970, to file reply briefs (attached to above order) (cert copies delivered 4/30/70).

May 6 Filed Brief of Intervening Defts Spokane, Portland and Seattle Railway Co. and Union Pacific Railroad Co. with three copies (cert copies delivered 5/7/70).

7 Lodged Brief of the Interstate Commerce Commission with three copies (cert copies delivered 5/7/70).

21 Lodged Reply Brief of Pltf Public Utility Commissioner of Oregon with three copies (cert copies delivered to K, S, B).

21 Filed Reply Brief of Southern Pacific Transportation Company with three copies (cert copies delivered to K, S, B).

21 Filed Reply Brief for the Port of Portland, Plaintiff with three copies (cert copies delivered 5/22/70).

21 Filed stipulation for extension of time to file reply brief.

1970

- 21 Filed and Entered Order that pltf Chicago, Milwaukee, St. Paul & Pacific RR have to and including June 1, 1970, to file reply brief (5/20/70) (cert copies delivered May 25, 1970).
- June 1 Lodged Reply Brief of Chicago, Milwaukee, St. Paul and Pacific Railroad Company with three copies (cert copies delivered this date).
- June 22 Record of Trial before Three-Judge Court on decision rendered by ICC.
- 22 Entered Order case SUBMITTED
- July 6 Filed Reporter's Transcript of Proceedings dated June 22, 1970.
- 9 Filed and Entered affirming orders of the Commission and dismissing complaint.
- 21 Filed letter designation of appeal to the Supreme Court of the United States (on behalf of plts. Southern Pacific Transportation Company and Chicago, Milwaukee, St. Paul and Pacific RR).
-

*In the United States District Court
for the District of Oregon*

Civil No. 69-696

Port of Portland,
Sam R. Haley, Public Utility
Commissioner of Oregon,
Commission of Public Docks
of City of Portland, Oregon,

Plaintiffs,

vs.

The United States of America
and Interstate Commerce Commission,
Defendants,

Chicago, Milwaukee, St. Paul
and Pacific Railroad Company,
Plaintiff in Intervention.

ORDER AND JUDGMENT

The Court finds that the report and order of the Interstate Commerce Commission (Commission), Division 3, decided June 6, 1969, and the orders of the Commission, Division 3, dated October 24, 1969, and November 21, 1969, in its Finance Docket Nos. 24679, 24890, and 24891, Spokane, Portland & Seattle Railway and Union Pacific Railroad Company—Control—Peninsula Terminal Company, 334 ICC 419, are supported by substantial evidence and are neither arbitrary nor capricious;

Now, THEREFORE, the orders of the Commission are affirmed, and this action is dismissed.

Dated this 9th day of July, 1970.

John F. Kilkenny
United States Circuit Judge

Gus J. Solomon
United States District Judge

Robert C. Belloni
United States District Judge

*Served June 20, 1969**Interstate Commerce Commission***FINANCE DOCKET No. 24679¹****SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—PENINSULA TERMINAL COMPANY**

Decided June 6, 1969

1. In Finance Docket No. 24679, acquisition by the Spokane, Portland & Seattle Railway Co., and the Union Pacific Railroad Co., of control of the Peninsula Terminal Company through purchase of capital stock, approved and authorized. Conditions prescribed. Petitions of the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., and the Southern Pacific Co., for inclusion in the transaction denied.
2. In Finance Docket Nos. 24890 and 24891, joint use, under section 3(5) of the Interstate Commerce Act, by Southern Pacific Co. of facilities of the Peninsula Terminal Company and trackage of the Union Pacific Railroad Co., found to be not in the public interest and applications denied.

Hugh L. Biggs, Charles W. Burkett, James Warren Cook, Richard Devers, Thomas H. Gonser, Randall B. Kester, F. J. Melia, Raymond K. Merrill, Warren H. Ploeger, Thomas H. Ploss, E. O. Schiewe, R. Paul Tjossem, John F.

1. This report also embraces Finance Docket No. 24890, Southern Pacific Co.—Common Use of Terminal Facilities—Peninsula Terminal Co., and Finance Docket No. 24891, Southern Pacific Co.—Common Use of Certain Terminal Facilities—Union Pacific Railroad Co.

Weisser, W. Harney Wilson and Oglesby W. Young for applicants and petitioners.

Lloyd A. Combs, Dale T. Crabtree, Samuel R. Delisi, William M. Dunegan, John L. Green, Richard H. Kraushaar, Robert K. Little, Hollis Menow, Milton A. Mowat, Harold A. Ross, Richard W. Sabin, Robert W. Skirvin, Edgar E. Smith, Lofton L. Tatum, Robert Y. Thornton, Homra C. Watson, Milton A. White and Henry M. Wick, Jr., for protestants and interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, DEASON, AND STAFFORD
STAFFORD, *Commissioner*:

Exceptions to the hearing examiner's report and recommended order have been filed jointly by the Spokane, Portland and Seattle Railway Company (SP&S) and the Union Pacific Railroad Company (UP), separately by UP, the Southern Pacific Company (SP) and the Brotherhood of Locomotive Engineers (BLE). Replies to exceptions were filed by SP&S and UP (joint applicants), SP, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), the Port of Portland (the Port), and the Public Utility Commissioner of Oregon (Oregon Commission). The applicants request oral argument. However, in our opinion the issues herein can be disposed of without hearing the parties orally and the applicants' request is denied. Our conclusions herein differ from those of the hearing examiner.

In the title proceeding, Finance Docket No. 24679, the joint applicants on July 25, 1967, sought authority under section 5(2) of the Interstate Commerce Act to acquire control of the Peninsula Terminal Company (Peninsula) through

the purchase of its entire capital stock in equal shares. By petition filed August 23, 1967, Milwaukee, under section 5(2)(d) of the act, seeks inclusion in the transaction for authority (1) to purchase one-third of the capital stock of Peninsula from its present owner upon the same terms and for the same per-share consideration as the joint applicants; (2) to pay one-third of the purchase price of two diesel locomotives sold Peninsula by the latter's present owner; and (3) to acquire trackage rights over tracks owned jointly by the joint applicants and connecting SP&S with Peninsula. By petition filed November 2, 1967, and amended petition filed November 29, 1967, SP seeks inclusion in the transaction (1) as an equal joint owner of Peninsula; (2) as a condition to such joint ownership to acquire trackage rights over UP's main line between the UP-SP track connection in UP's East Portland Yard (the present Portland terminus of SP) and Peninsula in North Portland, via UP's Albina Yard, St. John's Junction, the UP tunnel, Peninsula Junction and the UP connection with Peninsula, approximately 6.75 miles, all in East Portland, Oreg.; and (3) in the event the joint applicants decline to acquire ownership of Peninsula subject to SP's inclusion, for an order pursuant to section 3(5) of the act authorizing common use by SP and the UP track referred to in (2).

In Finance Docket No. 24890, by application filed December 21, 1967, SP seeks authority under section 3(5) of the act, for common use of the terminal facilities of Peninsula and bridge traffic rights over the line of UP described above between Peninsula and the UP-SP track connection in East Portland Yard.

In Finance Docket No. 24891, by application also filed December 21, 1967, SP seeks authority under section 3(5) of the act for common use of the terminal facilities of UP

between Peninsula and the UP-SP connection in East Portland Yard. The joint applicants, Milwaukee, SP and Peninsula are common carriers by railroad subject to regulation under the provisions of part I of the act.

THE PARTIES

A detailed description of the railroad parties to these proceedings, their operations in the Portland area and their positions with respect to the applications and petitions involved herein are set out in excerpts from the hearing examiner's report appended hereto. These excerpts, to the extent they describe the common carriers involved in these proceedings, are adopted as our own and a detailed description of the railroad parties will not be set out here except as follows for clarity of discussion.

Peninsula.—This carrier was incorporated in Oregon on June 5, 1918. It operates approximately 3.79 miles of terminal switching railroad in East Portland, serving 14 industries, pursuant to authority granted in *Peninsula Term. Co. Operation*, 166 I.C.C. 597. Ownership of the entire 1,500 shares of its outstanding capital stock by its present owner, United Stockyards Corporation (United) was authorized on March 9, 1943, in *Stockyards Ry. Co. Control*, 254 I.C.C. 207.

The interest of the Port, SP and Milwaukee in the purchase of Peninsula's control by SP&S and UP is based on the fact that at the western end of Peninsula's trackage is the Rivergate Industrial District (Rivergate), consisting of about 2,942 acres of land owned, and under development, by the Port at the junction of the Columbia and Willamette Rivers, generally north of and adjacent to the corporate limits of Portland, Oreg. Rivergate has about 6 miles of

waterfront on the 40-foot navigation channels of the two rivers. Much of the Rivergate land is unoccupied and has yet to be reclaimed. According to the Port, about 500 acres are filled to usable grade and another 300 are now undergoing filling by a pipeline dredge.

The Port's consultants, in an 18-month's study of the area in which Rivergate is located recommended, among other things, that a Rivergate rail system be constructed to connect with rail trunklines. Two alternate rail access routes to Rivergate include a route over existing tracks of the Port which connect with tracks jointly owned by the joint applicants entering Rivergate from the southwest and another route based upon the possible construction on the eastern side of Rivergate of an SP&S main-line extension or an extension of Peninsula's tracks into the area.

Six industries now occupy about 265 acres, or slightly less than one-tenth of the Rivergate area. On the west, or Willamette River, side of Rivergate are a chemical lime plant, occupying 30 acres; an aluminum foundry, 20 acres; an area packaging plant, 25 acres; an integrated steel mill, 150 acres; and since the closing of the record herein, a waterways terminal. The remaining industry is the poleyard of the Crown Zellerbach Corporation (Zellerbach) located on the east, or Columbia River, side of Rivergate. Of the foregoing Rivergate industries, only Zellerbach is now served by Peninsula. It is served by means of its own industrial trackage, which connects with Peninsula's track. The remaining 13 industries served by Peninsula are located on, or adjacent to, its main and side tracks on the land which Peninsula occupies.

SP&S.—This joint applicant was incorporated on August 23, 1905, in the State of Washington. Its present name was adopted on February 1, 1908. It owns and operates a line

of railroad in Oregon and Washington. Its entire 400,000 shares of capital stock are held equally by the Great Northern Railway Company and the Northern Pacific Railroad (NP). It is presently involved with its parent carriers and another of their subsidiaries, the Chicago, Burlington & Quincy Railroad Company, in a consolidation of their respective systems. This consolidation has been approved and authorized by the Commission and is undergoing review by the United States Supreme Court. See *Great-Northern Pac.—Merger—Great Northern* 331 I.C.C. 228 and 331 I.C.C. 869 (*Northern Lines* case.)

As a condition to consummating the consolidation, the parties thereto are required by condition No. 24 of appendix L to the *Northern Lines* case (see footnote 5, *infra*) to provide access, to Milwaukee, via trackage rights, to the city of Portland, which has not heretofore been served by Milwaukee.

UP.—The other joint applicant owns and operates over 9,500 miles of track in the States of California, Colorado, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, Oregon, Utah, Washington, and Wyoming. Its outstanding capital stock is widely diversified and it is not controlled by any other carrier.

SP.—This carrier is a Delaware corporation owning and operating a line of railroad through the States of Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana. Like UP, its outstanding stock is widely diversified and it is not controlled by any other carrier.

Milwaukee.—The fifth and last common carrier involved here is a Wisconsin corporation operating a line of railroad in the States of Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Washington, and Wisconsin. Its principal transcontinental line extends from Chicago to Longview,

Wash., a point on the lower Columbia River 46-rail miles north of Portland. As previously stated, it will obtain access to the latter point, for the first time, via trackage rights granted by condition No. 24 in the *Northern Lines* case, upon consummation of the consolidation authorized in that proceeding. It is also presently involved in Finance Docket No. 24182, Chicago, Milwaukee and North Western Transportation Company — Consolidation — Chicago and North Western Railway Company and Chicago, Milwaukee, St. Paul and Pacific Railroad Company. This application has been heard and is pending decision by the Commission.

THE PROPOSED TRANSACTIONS

SP&S and UP.—As recited in the appendix, United is no longer interested in operating Peninsula. It has no preference with respect to purchasers of Peninsula but offered the property to SP&S as one of the railroads connecting physically with Peninsula. SP&S communicated United's offer to UP, the other physical connection. The two connecting railroads now propose to purchase, in equal shares, all of Peninsula's outstanding stock from United for \$299,405 in cash, adjusted to reflect changes in value of Peninsula's property occurring between February 28, 1967, the date of the purchase contract, and the closing date of the transaction,² plus the sum of \$70,000 to reimburse United for two switch engines it sold to Peninsula.

Milwaukee.—As indicated above and in the appendix, Milwaukee presently performs no physical operations to

² The closing date of the transaction will be no later than the first day of the month following our approval of the purchase of Peninsula and the acceptance by the parties of any conditions we may impose in connection therewith.

and from Portland. However, with its entrance into that point authorized as an incident to consummation of the *Northern Lines* case, and upon its inclusion in this transaction, it plans to serve all the industries on Peninsula's tracks with no absorption of switching charges. Contingent upon the extension of its operations to Portland pursuant to the *Northern Lines* case, Milwaukee requests joint and equal ownership of Peninsula's stock with the other trunk lines and considers joint ownership of Peninsula essential to its Portland operations insofar as the industries located on Peninsula and in Rivergate are concerned.

Milwaukee asserts that if its petition for inclusion is denied and the *Northern Lines* consolidation is consummated, its traffic to North Portland would move to Guild's Lake Yard, about 6 miles south of North Portland. The traffic would then be switched back to North Portland. This back movement, according to Milwaukee, would require an extra day in transit and be to Milwaukee's competitive disadvantage because the joint applicants, by virtue of their ownership of Peninsula, could fix Milwaukee's switching charges and direct operation of Peninsula to meet their own operating requirements rather than those of Milwaukee.

UP contends, in effect, that we lack jurisdiction to grant Milwaukee's petition for inclusion inasmuch as (1) Milwaukee is not a railroad "in the territory involved" within the meaning of section 5(2)(d) of the act;³ (2) Milwaukee will

3. Section 5(2)(d) of the act provides that:

The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

be unable to serve the Portland terminal area, even though the *Northern Lines* case is consummated, without further authority under sections 1(18) and 5(2) of the act; and (3) the tracks connecting Peninsula and SP&S are jointly owned by UP, SP&S and NP, therefore, since condition No. 24 of the *Northern Lines* case is not applicable to UP and since joint use of this track cannot be granted over UP's objections in these proceedings, Milwaukee would be unable to reach Peninsula. UP and SP&S contend that Milwaukee's joint ownership of Peninsula would be contrary to the public interest and UP alleges that such joint ownership and control would lead to cumbersome, confused and divided management and thus, would not be in the public interest.

BLE and other labor organizations oppose the Milwaukee petition because, if granted, it would reduce employment at other yards in Portland by eliminating switching and interchange operations.

SP.—As previously stated, SP requests a condition to approval of the SP&S-UP application providing for its inclusion as an equal joint partner in the ownership of Peninsula and as a condition to such ownership, trackage rights over UP's main line and the terminal trackage between Peninsula and the SP&S-UP track connection at East Portland. SP asks that it be authorized to use the UP trackage under section 3(5) of the act in the event either or both of the joint applicants decline to participate in the acquisition of Peninsula subject to the conditions SP requests.⁴

4. Section 3(5) of the act provides, in part, that:

If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal

Also because of the permissive nature of our authorizations under section 5(2), SP filed its applications in the two embraced cases to assure common use of the terminal facilities of Peninsula and UP's terminal facilities between Peninsula and the SP-UP connection at East Portland and bridge traffic rights over UP's line between Peninsula's line and the connection between SP and UP, even though the joint applicants refused to consummate any authorization of their purchase of Peninsula.

Under its proposals, SP alleges that faster service to Peninsula's industries can be offered through its service and that it anticipates no operating difficulties or labor complications in connection with its proposals. It argues that Rivergate is unique in that it includes several thousand acres of publicly owned industrial land that depends upon the flexibility of rail service for successful development.

As in the case of Milwaukee's proposal, UP opposes SP's petition on the grounds that SP like Milwaukee is not a railroad "in the territory involved;" the management of Peninsula would become difficult and indecisive with four owners; and that ownership by the joint applicants would assure keeping the size of Peninsula's yard facilities and the cost of its operation at a minimum. UP opposes the operation by SP through UP's Albina Yard, that would result from the bridge trackage rights requested by SP,

facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. • • •

because of the congestion it would create. It asserts that SP operation in the yard would result in uneconomical and wasteful conditions there and that operation of SP trains through Albina Yard is not practical because of the large number of trains already moving through the yard.

The labor organizations appearing in the proceeding oppose SP on the same grounds they oppose Milwaukee; the loss of jobs that would ensue from the petitioners' proposals.

Interveners.—The petitions and applications of Milwaukee and SP are supported by the Port, the Portland Commission of Public Docks, city of Portland and the Oregon Commission. The positions of these interveners are set forth in the excerpts from the hearing examiner's report appended hereto and need not be repeated here.

SP and Milwaukee, particularly the former, are also supported by Zellerbach, the Oregon Steel Mills and Collier Carbon & Chemical Corporation, all industries located, or preparing to locate, in Rivergate. Excerpts from the hearing examiner's report containing a discussion of their positions are also included in the attached appendix. The excerpts describing public agency and shipper interveners' positions are appended for information purposes only. The positions they reflect are not to be understood as having been adopted by us. Williamette Wood Products, Inc., Morrison Oil Company and Serendip Industrial Materials of Portland, Oreg., support the application of the joint applicants.

HEARING EXAMINER'S RECOMMENDATIONS

In the title proceeding, generally, the hearing examiner recommends approval of the sale of Peninsula's stock control to SP&S, UP, and SP in equal shares, subject to sale by each of a one-twelfth interest to Milwaukee upon con-

summation of the *Northern Lines* case and the filing by Milwaukee of an application under section 1(18) of the act for authority to operate between Longview Junction and Portland. He would also grant the joint use authority requested by SP under section 3(5) of the act.

In the embraced proceedings, the hearing examiner would grant the applications of SP under section 3(5) of the act.

For the protection of railway employees, the hearing examiner recommends imposition of the conditions originally prescribed in *Chicago & N. W. Ry. Co. Merger*, 261 I.C.C. 672, 675 (*North Western* conditions), which provide that:

During the period of 4 years from the effective date of our order herein such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this section shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order.***

EXCEPTIONS TO HEARING EXAMINER'S REPORT

The parties filing exceptions to the hearing examiner's recommendations continue to press, on exceptions, the same general positions they adopted at the outset of these proceedings.

Exceptions of SP&S and UP.—The joint applicants contend that SP and Milwaukee are not "railroads within the territory involved" and that even if the *Northern Lines* case is consummated, Milwaukee, under the terms of condition No. 24(a) of appendix L to the *Northern Lines* case, and under the decision of the United States Supreme Court

in *Texas & Pac. Ry. v. Gulf, Etc.*, 270 U.S. 266 (1926), would be unable to serve Peninsula and the Portland area without first securing a certificate of public convenience and necessity permitting an extension of its line of railroad to Portland under section 1(18) of the act.⁵ They contend that undue emphasis is placed on the future development of Rivergate and that the hearing examiner erroneously holds the Portland terminal area to constitute one terminal entity. They argue that the evidence does not support a four-way ownership of Peninsula, either from a general public or a shipper standpoint, and that common use by SP of the Peninsula and joint-applicant facilities is not in the public interest.

The replies of SP, Milwaukee, the Port and the Oregon Commission to the exceptions of the joint applicants are, like those exceptions, mostly reflections of the repliants positions from the outset of the proceedings and agree generally with the findings of the hearing examiner with respect to the petitions and applications of SP and Milwaukee.

Exceptions of SP.—The exceptions of SP are taken to details in the hearing examiner's findings relating to compensation for the use by SP of UP interchange trackage and access by SP over intervening UP trackage. The joint applicants, in reply, take a contrary view to the points raised by SP.

5. Condition No. 24, and subparagraph (a) thereof, state:

24. At the request of the Milwaukee, presented in writing not more than 6 months after date of consummation of the unification authorized herein or not more than 6 months after the effective date of any certificate or order of this Commission.

(a) Permitting that railroad to extend its operations to Portland, Oreg., and to acquire trackage rights over the line of NuCo [the consolidated carrier resulting from consummation of the Northern Lines case] between Longview Junction, (footnote continued on next page)

Exceptions of BLE.—On exceptions, BLE reiterated its support for the acquisition of Peninsula by the joint applicants, which it considers to be in the public interest, and its objection to the petitions and applications of Milwaukee and SP. It also objects to the so-called *North Western* conditions recommended by the hearing examiner for the protection of employees and requests the imposition of "attrition" conditions similar to those imposed in the *Northern Lines* case.⁶ If we consider that this case does not merit full attrition conditions, BLE requests the imposition of the so-called *New Orleans* conditions as prescribed in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271.

Whichever conditions are imposed, the BLE alleges that they should be extended to protect the employees of North Portland Terminal Company if the petitions and applications of Milwaukee and SP are granted since such grants would permit SP, in particular, to bypass North Portland terminal in serving Peninsula industries, to the detriment of the North Portland employees.

(footnote 5 continued)

Wash., and Portland, Oreg., NuCo shall grant to the Milwaukee, upon such fair and reasonable terms as the parties may agree, or as determined by this Commission in the event of their inability to agree, trackage rights to operate freight trains over NuCo lines between Longview Junction and Portland, including the right to serve on an equal basis all present and future industries at Portland and intermediate points and the use of NuCo facilities at Portland necessary for the switching of traffic to other railroads and industries. NuCo shall maintain Portland as an open gateway on a reciprocal basis with the Milwaukee to the same extent as with other connecting carriers.

6. In previous reports, "attrition" has been held to mean that "no reduction in force of employees shall occur other than principally by death, retirement, discharge for cause or resignation." For simplicity, the phrases "attrition conditions," "attrition protection," or "attrition agreement" are used in Commission reports to reflect this concept. See *Chesapeake & O. Ry. Co.—Control—Western Maryland Ry. Co.*, 328 I.C.C. 684, 715.

In reply to BLE's exceptions, the joint applicants allege that if they are authorized to acquire control of Peninsula, there will be little change in the operation of that carrier. Consequently, there will be little or no effect on railway employees and the *North Western* conditions recommended by the hearing examiner will afford sufficient protection to the employées.

DISCUSSION AND CONCLUSIONS

Title proceeding.—The record establishes that the purchase of Peninsula by SP&S and UP will be in the public interest. The joint applicants now connect with Peninsula and the present service by Peninsula to its industries will be unaffected by the substitution of joint applicant's control for that of United. Furthermore, it will be in the public interest for control of Peninsula to pass from the noncarrier, which no longer desires it, to carrier auspices and on this record the most logical owners would be Peninsula's connecting carriers. It does not appear from the record, nor does any party contend, that the purchase price for Peninsula, arrived at by the parties through arm's length bargaining, is unreasonable or that it would jeopardize the financial structure of the joint applicants. After due consideration we can find no reason for withholding approval of our authority for the purchase. However, no stock or securities are to be issued or any obligation or liability assumed in connection with such purchase without our prior approval under section 20a of the act.

Jurisdiction over petitions for inclusion.—We do not agree with the joint applicants' contention that because SP and Milwaukee do not physically connect with Peninsula, they are not "railroads in the territory involved" within the meaning of section 5(2)(d), and, therefore, that we lack

jurisdiction to require their inclusion in the title proceeding.⁷ Our authority to require inclusion of another carrier in cases of this nature does not arise primarily from section 5(2)(d). Instead it arises from the power conferred upon us by section 5(2)(b) to impose terms, conditions and modifications to our section 5(2) authorizations.⁸ The only test required by section 5(2)(b) of terms, conditions, and modifications is that they be just and reasonable. See *Pennsylvania R. Co.—Merger—New York Central R. Co.*, 328 I.C.C. 304, 326.

Section 5(2)(d) does not limit our conditioning power under section 5(2)(b) with respect to other railroads. It merely requires us to give weight to the petitions of "other railroads in the territory involved" and to include such other railroads in a transaction if the public interest for such inclusion is shown. Cf. *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 330 I.C.C. 780, 787-788. Accordingly, we may require the inclusion of SP and Milwaukee in the title proceeding, if we find such inclusion to be just and reasonable, i.e., in the public interest, regardless of whether either or both of the petitioners can meet the joint applicants' technical definition of a railroad or "railroads in the territory involved." Of course, the lack of any

7. See footnote 3 regarding section 5(2)(d) of the act.

8. Section 5(2)(b) provides that

Whenever a transaction is proposed under sub-paragraph (a) [to section 5(2)], the carrier or carriers or person seeking authority therefor shall present an application to the Commission, If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable.

physical connection is a factor for consideration in determining whether a condition requiring inclusion is just and reasonable.

We also disagree with the joint applicants' contention that without a certificate of convenience and necessity under section 1(18) of the act for an extension of its line of railroad to Portland, Milwaukee cannot be included in this proceeding.

Condition No. 24(a) to the *Northern Lines* case⁹ grants Milwaukee the right to acquire trackage rights over Northern Lines track between Longview Junction, Wash., and Portland, Oreg., provided, of course, the consolidation authorized in the *Northern Lines* case is consummated. A certificate under section 1(18) of the act is necessary before a carrier can legally extend its operations over trackage not theretofore operated in interstate and foreign commerce. However, if the trackage is already operated in interstate commerce (in effect, it is already certificated), only section 5(2) authority is required. The lessee under a trackage rights agreement in such case merely succeeds to the right to operate the line, within the limits of the trackage rights contract, of the lessor railroad. See *International - G. N. R. Co. Trustee Trackage Rights*, 275 I.C.C. 27, 33.

The joint applicants are misinterpreting condition No. 24(a) by arguing that it requires applications (both of which, of course, would be subject to protests) under section 1(18) and section 5(2) before Milwaukee can extend its lines via *Northern Lines* trackage into Portland. As used in the condition, the language "Permitting that railroad to extend its operations to Portland, Oreg., and to acquire trackage rights over the line of NuCo between Longview Junction, Wash., and Portland, Oreg.," is only intended to emphasize the fact that Milwaukee is, in the

9. See footnote 5.

Northern Lines case, accorded access for the first time to Portland. The Commission did not intend, and did not state in condition No. 24, that Milwaukee must first seek approval under section 1(18) of the act for an extension of its line of railroad over *Northern Lines* trackage before it could request authority under section 5(2) to acquire the trackage rights necessary for its entry into Portland. The question of whether a certificate of public convenience and necessity under section 1(18) is necessary before railroad service can be extended by trackage rights over the line of another carrier was decided in the negative by the Commission over 20 years ago in *Chicago, B. & Q. R. Co. Control*, 271 I.C.C. 63, 66-67, and we can find nothing in the *Northern Lines* case to indicate that the Commission intended to reverse that longstanding precedent.

The decision in *Texas & Pac. Ry. v. Gulf, etc. Ry.*, *supra*, cited by joint applicants in support of their section 1(18) argument was, of course, decided prior to the enactment of the Transportation Act of 1940, placing the regulation of trackage rights acquisitions under the provisions of section 5(2) of the act instead of under section 1(18) where such regulation had previously been vested. Accordingly, the cited proceeding is inapplicable to the situation here.

We are satisfied, and we so find, that it is within our jurisdiction to determine whether, on this record, SP and Milwaukee should be included within the transaction:

Merits of petitions for inclusion.—Though we possess the necessary jurisdiction to require inclusion of Milwaukee and SP in a four-railroad control of Peninsula and to authorize the common use of terminals and facilities requested by SP, such control must meet the public interest requirement before any condition we might impose in these respects can be found just and reasonable.

With respect to Milwaukee's petition, we wish to point out that this case cannot be viewed as part of the general realignment of western railroad competition resulting from the Commission's approval of the *Northern Lines* merger. Condition No. 24 of the *Northern Lines* case grants Milwaukee the right of access to Portland and the right to serve industries therein; however, this condition is applicable only to *Northern Lines* trackage and territory. The condition is silent with respect to trackage and territory in which other carriers, such as UP, have a joint interest and the effect of the condition upon such joint trackage and territory was not presented to, nor considered by, the Commission. Furthermore, the instant application and Milwaukee's petition for inclusion therein, were not filed until after the record was closed in the *Northern Lines* case, and not until long after the *Northern Lines* applicants had agreed to Milwaukee's request for imposition of condition No. 24. Thus, the purchase of Peninsula by the joint applicants was not within the contemplation of the Commission at the time condition No. 24 was imposed. Milwaukee's inclusion in that purchase cannot, therefore, be considered to implement that condition; and a denial of its petition for inclusion would take nothing from Milwaukee that it was granted in the *Northern Lines* case nor be contrary in any way to the spirit and intent of the Commission to accord Milwaukee the right of access into Portland over *Northern Lines* trackage. Accordingly, we consider the petition of Milwaukee under the same public interest criteria as the petition and applications of SP, rather than as a petition to carry out the provisions of condition No. 24.¹⁰

10. Upon completion of litigation in the *Northern Lines* case and consummation of that merger, Milwaukee may wish to seek relief from the Commission in that proceeding to determine the relationship of condition No. 24, if any, to Peninsula's tracks which would at that time be partially owned by the *Northern Lines*.

The hearing examiner concluded that the entire Portland territory is an industrial transportation area which in considering the public interest can be treated only as one transportation terminal entity. He felt that "divisive determinations would result in multiple problems and prolonged litigation not conducive to the future welfare, growth and development of the Portland area." Therefore, he based his recommendations upon consideration of the involved area as a whole.

We cannot conclude, however, that the mere presence of SP, and the prospective presence of Milwaukee, in the general Portland area give them the right to serve all industries anywhere within that undefined geographical area. Cf. *Nashville, C. & St. L. Ry. Construction*, 295 I.C.C. 363, 377. If we were to adopt the hearing examiner's conclusion, we would be providing grounds for every railroad in the undefined Portland area to seek to serve the stations and industries of any or all other railroads. The resulting situation could well give rise to more problems and litigation and be more disruptive of growth and development of the area than the "divisive determinations" frowned upon by the hearing examiner. Therefore, we do not agree with his conclusion in this regard and for that reason we consider Peninsula, rather than the entire Portland area, to be the focus of our attention here in resolving the public interest factor.

• Confining our consideration of the terminal area involved to Peninsula, we find that since neither SP nor Milwaukee now connect with Peninsula, and have never connected with it in the past, their direct service to Peninsula's industries over the objections of SP&S and UP would constitute a new operation and an invasion of the joint applicant's territory. In the past, the Commission has usually held that sound

economic conditions in the transportation industry require that a railroad now serving a particular territory should normally be accorded the right to transport all traffic therein which it can handle adequately, efficiently, and economically, before a new operation should be authorized. This conclusion is applicable not only with respect to existing traffic but also with respect to potential traffic and is generally also followed in proceedings involving motor carriers. See *Minneapolis, St. P. & S. S. M. R. Co. Acquisition*, 295 I.C.C. 787, 802, and cases cited therein.

As shown in the appendix, SP shared, through connections and use of joint rates and routes, in only about 20 percent of Peninsula's traffic during 1966, and only about 17 percent during 1967. Milwaukee's share, also via connections and joint rates and routes, amounted to only 1 percent during those years. Permitting SP and Milwaukee to acquire access to, and equal ownership of, Peninsula and therefore participate in its existing traffic on a direct haul basis will, of course, allow those two railroads to increase their share of Peninsula's declining traffic (3,640 loaded cars handled in 1966 and 2,748 handled in 1967). These increased shares of SP and Milwaukee could only be at the expense of the joint applicants and the railway employees whose jobs would be eliminated by the direct service planned by SP and Milwaukee.

Only three of the 13 shippers located on Peninsula's line participated in these proceedings and they support the joint applicants. Two of these three desire present service to continue. Three shippers, all located in Rivergate, support SP. At the time of the hearing, only one, Zellerbach, was in actual operation and it does not oppose the joint applicants. Its interest appears to be in obtaining the maximum

amount of direct service in order to increase its car supply. It also believes that four-way control of Peninsula would result in the elimination of a 22-degree curve in Peninsula's line thereby permitting the use of longer cars than are presently used for its poles. Its complaint with regard to present service is that 64 percent of its pole shipments during the period between December 1, 1966 and November 30, 1967, incurred an average delay of 4.5 days each because of car shortages. The joint applicants reply that the drop-end gondola cars, supplied by the railroads for the movement of Zellerbach's poles, are special purpose cars, not always immediately available. The record does not warrant a finding that car supply to Zellerbach under four-railroad control would be increased or that there would be any greater likelihood of track realignment.

The steel mill supporting SP was in the process of construction at the time of the hearing. According to the record, it appears to have been located in Rivergate in order to take advantage of the available water transportation. Although it is interested in developing an ore field near SP's line in California, its Rivergate plant was constructed in an area where the round trip unit-train SP service, for which it states a preference, cannot be instituted without major fill and track construction. The record does not establish that under four-railroad control, the other three carriers would be willing for Peninsula to incur the expense of new construction for the sole benefit of SP. Likewise, the record fails to establish that the steel mill would not develop the California ore field if SP's unit-train service were unavailable because of the joint applicants' control of Peninsula.

The third shipper supporting SP is the chemical company, also under construction in Rivergate at the time of

the hearing. The record shows it was located in Rivergate through the efforts of SP&S. It also intends to utilize water transportation for its inbound raw materials and water, truck, and rail for its outbound product. Its support of SP is apparently based on the general supposition that the more rail service it has into its plant, the better such service will be. It offered no particulars as to the superiority of SP service and does not contend that its operations will in any way be hampered if direct SP service is not received. In our opinion, and we so find, the evidence offered by the three shippers supporting SP's position, as well as the evidence offered by the petitioners themselves, fails to establish that the joint applicants, through control of Peninsula, cannot handle present and future traffic in the Peninsula territory adequately, efficiently, and economically.

We have thoroughly considered the briefs and replies to exceptions filed by the public agencies participating in these proceedings. Like the individual shippers supporting SP, the public agencies are apparently motivated by a desire for the service of as many railroads as possible into Rivergate. However, this objective, if achieved at the expense of the joint applicants as proposed in the instant proceedings, would be directly contrary to the precept of the Congress, embodied in its national transportation policy, to foster sound economic conditions in the transportation industry. The adverse effect on SP&S and UP, and the shippers dependent upon them for service, of admitting SP and Milwaukee into ownership and control of Peninsula, would outweigh any advantage accruing to SP, Milwaukee, and the Rivergate industries of four-railroad ownership. We cannot find, therefore, that inclusion of SP and Milwaukee in the title proceeding would constitute a just and reasonable term, condition, or modification of the authority requested by the joint applicants.

Common use applications under section 3(5).—The intent of Congress in enacting section 3(5) was to provide a method of avoiding the necessity for incurring unnecessary expense in duplicating existing terminal facilities by a railroad entitled to serve a particular territory. Cf. *Use of Northern Pac. Tracks at Seattle by Great Northern*, 161 I.C.C. 699. For a more recent case, see *Seaboard Air Line R. Co.—Use of Terminal Facilities*, 327 I.C.C. 1, where one railroad was authorized to acquire common use of another's facilities in order to continue service to a port which had been removed to a new location.¹¹ In the instant case, SP is not entitled to serve Peninsula or Rivergate. Therefore, there is no question of avoiding costly construction from SP's present Portland terminus to Peninsula through the acquisition of the common use rights it requests. Accordingly, we find no ground for authorizing the requested common use.

Since we find that the common use authorizations requested by SP under section 3(5) of the act should not be authorized for the reasons stated above, we need not reach the questions of whether common use of the facilities involved would be practicable or would substantially impair the ability of Peninsula and UP to handle their own business. Other contentions of the parties as to fact or law, both with respect to the title proceeding and the common use applications of SP, not specifically discussed herein have been given consideration and found to be without material significance or not justified.

11. This case was cited by SP in support of an allegation that an invasion of territory may be accomplished by means of a section 3(5) authorization. Since the railroad acquiring the common use rights was actually serving the port involved, in the port's old location, and would continue to render the same service in the new location, there was no invasion of another railroad's territory and the cited case does not support SP's allegation.

Traffic conditions.—Although we find herein that joint control of Peninsula by SP&S and UP, through purchase of its capital stock, is in the public interest, Peninsula's present routings and interchanges should be maintained unchanged by the joint applicants. SP&S suggests that for this purpose it is willing to accept imposition of the so-called standard traffic conditions prescribed in *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455, 492. We believe that with some modification, these conditions will adequately serve their intended purpose in this case. Therefore, to protect the present routings and interchanges, our order herein will impose, by reference, the following traffic conditions:

1. Under the control of SP&S and UP, Peninsula shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Commission;

2. The present neutrality of handling inbound and outbound traffic to and from Peninsula by SP&S and UP shall be continued so as to permit equal opportunity for service to and from all lines reaching Peninsula through SP&S and UP without discrimination as to routing or movement of traffic, and without discrimination in the arrangements of schedules or otherwise;

3. The present traffic and operating relationships existing between Peninsula, on the one hand, and, all lines reaching Peninsula through the lines of SP&S and UP, on the other, shall be continued insofar as such matters are within the control of SP&S and UP;

4. Peninsula, SP&S and/or UP shall accept, handle, and deliver all cars inbound, loaded and empty, without discrimination in promptness or frequency of service irrespective of destination or route of movement;

5. Peninsula, SP&S and/or UP shall not do anything to restrain or curtail the right of industries, now located on Peninsula, to route traffic over any and all existing routes and gateways;

6. Peninsula, SP&S and/or UP shall refrain from closing any existing route or channel of trade with SP or Milwaukee on account of the transaction authorized in Finance Docket No. 24679, unless and until authorized by this Commission;

7. Consummation of the transaction authorized in Finance Docket No. 24679, shall constitute assent by the corporate parents of SP&S, the members of their respective systems, and any carrier resulting from consummation of the Northern Lines case, to be bound by these conditions to the same extent that SP&S is bound by these conditions; and

8. Any party or person having an interest in the subject matter may at any future time make application for such modification of the above-stated conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on our own motion for the same purpose.

Employee conditions.—The so-called *North Western* conditions recommended by the hearing examiner for the protection of railway employees are obsolete for transactions such as this and have not been imposed by the Commission for several years due to the uncertain protection they afford. In our opinion they are inadequate to protect the employees in this proceeding. It is our opinion, also, that the purchase of Peninsula's control by SP&S and UP will not affect employees to the extent that the attrition

conditions agreed upon by the carriers and employees in the *Northern Lines* case, and requested here by BLE, would be merited.

Instead, we believe that the *New Orleans* conditions, requested in the alternative by BLE, will provide sufficient protection and our order herein will impose, by reference, the conditions prescribed in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271, for the benefit of railway employees of the joint applicants and Peninsula adversely affected by this transaction, subject, however, to the following arbitration provision in lieu of those now in the *New Orleans* conditions:

In the event any dispute arises with respect to the protection afforded by these conditions or with respect to their interpretation, application or enforcement, which cannot be settled by the carriers and the employee or his authorized representatives within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a third, or neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate the third member, which designation when made will be binding upon the parties. The decision of the majority of the arbitration committee shall be final,

binding and conclusive. The salaries and expenses of the third member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

Inasmuch as the BLE's request for conditions to protect the North Portland Terminal employees is based on the contingency that SP and Milwaukee will participate in Peninsula's control, and since that contingency is precluded by our denial of the petitions and applications of those two carriers, there is no need to deal further with the matter, and the contingent request for the protective conditions is denied. Moreover there is no indication that the said employees come within the protective purview of section 5(2)(f).

ULTIMATE FINDINGS

The acquisition by the joint applicants of control of Peninsula does not involve any guaranty or assumption of the payment of dividends or fixed charges and will not result in any increase in total fixed charges. The petitions of SP and Milwaukee for inclusion therein have been considered and disposed of and no other railroad seeks to be included. Adequate transportation service to the public will not be affected and railway employees will be protected by the imposition of the conditions we have provided in their behalf.

Accordingly, we find in Finance Docket No. 24679 that, subject to the conditions imposed herein for the protection of railway employees and traffic, the acquisition by the Spokane, Portland and Seattle Railway Company and the Union Pacific Railroad Company of control of the Peninsula Terminal Company through the purchase of its entire capital stock in equal shares, as described herein, is a transaction within the scope of section 5(2) of the Interstate

Commerce Act, that the terms and conditions thereof are just and reasonable, that the transaction will be consistent with the public interest, and that the inclusion in the transaction of the Southern Pacific Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is not, for the reasons discussed herein, consistent with the public interest.

We further find in Finance Dockets Nos. 24890 and 24891, that the common use by the Southern Pacific Company of the terminal facilities of the Peninsula Terminal Company and a line of railroad of the Union Pacific Railroad Company and bridge traffic rights over the latter line, all as described herein, is not in the public interest.

An appropriate order will be entered.

APPENDIX

Excerpts from the report of the hearing examiner

Peninsula is a terminal railroad Oregon corporation subject to part I of the Interstate Commerce Act engaged in switching operations at North Portland, Oreg. North Portland is within the Portland switching district. Portland is a major deep channel seaport, transportation, and distribution center serving the Pacific Northwest and the Continental United States. The western end of *Peninsula's* main line extends to a Crown Zellerbach pole yard . . . at the eastern tip of Rivergate Industrial District (Rivergate) . . . affording potential connection with a proposed Rivergate rail system and the impetus for unusual carrier, industry, and public interest in these proceedings. *Peninsula* owns no tracks within Rivergate. It serves the pole yard by using industrial tracks of Zellerbach there. *Peninsula* was established as an essential for operation of Portland

Union Stockyards * * * to facilitate handling livestock, and to provide a rail connection between the stockyards and trunkline railroads serving the Portland area. * * * Swift & Company presently processes only agricultural chemicals, hides, and wool at North Portland and the volume of that activity is expected to decline. Crown Zellerbach Corporation (Zellerbach) recently acquired the North Portland Swift property and expects to establish a 200,000-square foot warehouse and an ink manufacturing factory there. Zellerbach also has its Flexible Packaging Division plant at North Portland and operates the above-described pole yard at the west end of the Peninsula line in the Rivergate area. Peninsula serves 13 industries on its line other than the stockyard. * * * Peninsula has become less important to Portland Stockyards and * * * [United Stockyards Corporation (United), Peninsula's present owner] has no interest in operating a railroad independent of stockyard operations. It therefore proposes to sell all of the stock in Peninsula at a reasonable price established through a 1962 appraisal by American Appraisal Company and has no preference as to the purchaser. * * * The agreed purchase price of Peninsula under a contract of purchase dated February 28, 1967, between United and SP&S and UP is a total of \$299,405 for all outstanding shares of common stock of Peninsula plus a sum of \$70,000 to reimburse United for two switch engines sold by United to Peninsula representing an unsecured account payable to United. Settlement to be made by checks of purchasers upon approval of the transaction. The appraisal was based on empty land, plus local costs of roadway and structures, less depreciation. Adjustment of the appraisal, at the time of contract of sale was made only as to rolling stock, working capital, and miscellaneous betterments. The president of Peninsula represents that the contract price is fair and reasonable.

Peninsula properties consist of 13.17 acres of land, none suitable for industrial development, 15,559 feet of main-line track plus spurs and sidings or a total of 3.79 miles of main-line and secondary and spur track laid on treated ties in sand with no rock ballast. The distance from one end of the line to the other is about 8,000 feet with a 5-foot elevation to its eastern end. The above-noted two locomotives owned by Peninsula consist of a 50-ton G.E. electric, and the other, a 70-ton Copper Bessimer electric, including tools and parts for operation and maintenance. Tools for track maintenance, a conveyance for workmen, a heated enginehouse for both locomotives, a yard office (14 feet by 23 feet 6 inches in size), and a sand house (11 feet by 18 feet in size) are also owned.

.

Peninsula receives cars directly from and delivers cars to SP&S, NP, UP, and Great Northern Railway Company (GN) (empty and loaded) at North Portland, which total [from 10 to 20] * * * cars daily handled through the North Portland Freight Station with an office located at the Portland Stockyards. The cars move to or from double main-line tracks jointly owned by SP&S and NP, extending from Vancouver, Wash., south across the Columbia River, through North Portland and across the peninsula at the junction of the Columbia and Willamette Rivers (the peninsula) to SP&S Doan Street Yard and the Portland Terminal Company's Guild's Lake Yard. At North Portland there is, among other things, a head block on the SP&S-UP tracks and a 259.5-foot track extending therefrom to four North Portland interchange tracks * * * [3 of] which accommodate from 30 to 35 cars each. One is used by Peninsula for receipt of cars from the trunklines. The second is used by Union Pacific to receive cars from Peninsula, GN, NP, and SP&S. The third is used by SP&S, NP,

and GN to receive cars from Peninsula and UP, and the fourth is an open or running track. Two of the interchange tracks are owned, one-half by Peninsula, and one-half jointly by UP, SP&S, and NP. The other two tracks are owned jointly by UP, SP&S and NP. The interchange tracks connect directly with Peninsula's main-line track to the north and also with a single-line track of [the Oregon-Washington Railroad & Navigation Company] (OWR&N), . . . [a wholly owned UP subsidiary], extending about 1.7 miles southerly across tracks of UP to Peninsula Junction, and thence about 2.6 miles through a tunnel near St. Johns Junction to Albina Yard. The interchange tracks are used by Peninsula, UP, NP, and SP&S as joint owners, and by GN under a contractual arrangement. The use includes interchanges between the four trunklines and also between those lines and Peninsula. . . . Service at North Portland is provided through a joint local freight agent of the trunklines who informs Peninsula of industry service requested as to outbound moves. The agent prepares the inbound interchange reports and Peninsula the outbound interchange reports. Outbound bills of lading of the four trunklines are signed by the joint agent. Expenses of maintaining the North Portland station are prorated among the four lines by car count, loaded and empty, with the joint-facility invoice prepared by the operating road, UP or SP&S. The joint agent recommends no routings for shippers and receives no open-route car orders. Usually there are four deliveries and two pickups daily of cars moving to or from Peninsula by SP&S or UP. Cars from Peninsula could move by UP to the pass near Peninsula Junction, to Kenton Yard (about 2.6 miles southeast of Peninsula Junction) or to Albina Yard. Cars picked up from Peninsula by SP&S usually move to Vancouver. In addition to the

above-described North Portland Freight Station, there is a yard office at the eastern end of the interchange tracks. The yard office is maintained jointly by SP&S and UP under terms of a 1912 agreement which established the North Portland Freight Station. Four clerks at the yard office are UP employees and four clerks at the North Portland Freight Station are SP&S employees.

Peninsula also provides local intraplant and intraterminal service. It has established local switching tariff No. 23, effective September 23, 1965 (not applicable to rail line-haul service), which among other things provides a \$22.44 per-car charge for each car movement and service charges for the handling of livestock. No other switching tariff is published by it. Peninsula solicits no traffic and traces no shipments moving beyond its line. Revenue from its connecting rail carrier service is derived from a division of revenue, billed and collected by the trunkline, generally amounting to \$29.25 a car when the car revenue exceeds \$60. The agreed rate divisions were established by Joint Division Sheet 8-R issued by North Pacific Coast Freight Bureau, Seattle, Wash., effective July 1, 1964. Usually the line-haul carriers absorb the division charges. Its locomotives and crews operate two 8-hour shifts each day of the week, one from 9 a.m. to 5 p.m. and the other from 9 p.m. to 5 a.m. Light repairs of roadbed and equipment are made by regular Peninsula employees and heavy repairs by part-time employees. Since January 1, 1968, by agreement with Portland Livestock, Peninsula employees load and unload livestock.

Basic labor agreements were entered into by Peninsula on April 14, 1943, with the Brotherhood of Railroad Trainmen and on June 15, 1941 (since modified), with the Brotherhood of Locomotive Firemen and Engineers. Peninsula engineers are paid \$29.05 or \$32.68 a day for service ex-

clusive of repairs and maintenance with no holidays. They receive vacation and insurance benefits equivalent to employees of trunkline carriers. Switchmen receive \$27.88 a day and the footboard yardmaster \$30.21 with seven annual holidays, extra pay for work on holidays, and vacation, insurance and welfare benefits similar to the engineers'.

United has agreed to manage Peninsula after the purchase in accordance with policies of its director, including supervisory, accounting, stenographic and other necessary managerial services as presently provided. United may terminate the agreement on 6 months' notice and the purchasers may terminate it on 30 days' notice.

During 1960, Peninsula handled 4,993 loaded or partially loaded cars compared to 2,748 cars in 1967. The latter represents about 39 percent of all cars interchanged at North Portland. The other 4,300 cars were interchanged between SP&S, NP, and GN, on the one hand, and, on the other, UP. From 1960 through 1967, there was a decrease in movements of livestock and packinghouse products and an increase in wood products. For example, in 1967, 34 percent of the cars handled transported wood products, 33 percent chemicals, 8 percent livestock, 7 percent packinghouse products, 13 percent paper products, and 5 percent other. In 1960, 16 percent of the cars handled wood products, 8 percent chemicals, 48 percent livestock, 15 percent packinghouse products, 6 percent paper products, and 7 percent other.

The statement of assets and liabilities of Peninsula as of February 1967, reveals total assets \$239,716, including current assets \$35,038 (cash on hand, \$17,365, accounts receivable, \$7,888, materials and supplies, \$8,669, and prepayments of insurance and other, \$1,116), properties—transportation road and equipment, less depreciation,

\$196,938, and miscellaneous physical property, \$7,740. Its expense and retained income statement for each of the calendar years, 1962 through 1966, and for February 1967, reveals, among other things, total railway operating expenses for February 1967, \$14,774 and for 1966, \$81,244, total income before fixed charges for February 1967, a minus (\$725) and for 1966, \$13,320 less miscellaneous rents paid, \$1. Rent for leased road equipment for 1966, was \$3,200 and for January 1967, \$533. The balance of retained income for February 1967, was \$7,504 and for 1966, \$8,762. At the beginning of 1962, its retained income was \$151,208, which by the end of February 1967, was reduced to \$7,504, after adding annual income (less losses), and subtracting dividends of \$167,556 paid during 1966.

.

SP&S operates over lines generally extending from Spokane through Pasco along the north side of the Columbia River to Vancouver, Wash., thence across the Columbia River through North Portland, thence across the east-west line of UP on the peninsula, and thence across the Willamette River, through Doane Lake Yard and Willbridge, Oreg., to Guild's Lake Yard. The latter connects with Portland Terminal Company tracks in downtown Portland. A connecting track at the intersection of SP&S and UP lines on the peninsula affords access to Barnes Yard. SP&S has trackage rights at Barnes Yard and at Terminal No. 4. UP and SP&S jointly own tracks extending from Barnes yard to the southwestern side of Rivergate which connect there with those of the Port of Portland. The SP&S Vancouver-Willbridge track, constructed in about 1908 with an industrial spur at North Portland, is jointly owned by SP&S and NP. In 1909 . . . [OWR&N] constructed a track connecting Albina with the spur track, and a year later

built a bypass track at the North Portland Junction. The bypass enables operation between Albina and North Portland interchange tracks without entering the SP&S-NP main line. * * * Additionally, SP&S owns Oregon Trunk Railroad extending from Wishram, Wash., a point on the SP&S line, to Bend, Oreg., and also owns Oregon Electric Railway Co., extending south from Portland to Eugene, Oreg. SP&S directly serves industries on its lines and those on lines used jointly by it located on the southwest side of the Willamette River at Portland including industries and docks also served by Portland Terminal Company. It serves industries at East Portland by use of the UP-SP steel bridge across the Willamette River near the Portland Terminal Company's depot and yard. SP&S switches cars to and from points in the East St. Johns and the Terminal No. 4 areas north of the Willamette River and south of Rivergate. SP&S delivers cars daily to the North Portland interchange tracks at 2:30 a.m. and 11 a.m. and picks up cars there at 9:30 a.m. and 6 p.m. UP also picks up and delivers cars there daily at 6:30 a.m. and 2:30 p.m. * * * North Portland line-haul traffic of NP and GN is usually moved twice daily to and from Vancouver. SP&S switches all Vancouver cars including those of UP. SP&S assesses a tariff switching charge for movement of cars to and from Peninsula interchange. * * * SP&S as owner of Peninsula could obtain Peninsula trackage rights which are essential to any agreement for switching operations. Presently Milwaukee could interchange cars with SP&S * * * for movement to the peninsula by payment of a division of the through rate. In the absence of Milwaukee trackage rights there the receiving carrier could designate car delivery points of Milwaukee cars. * * *

SP&S indicates that the extension of Peninsula to serve the Rivergate is uncertain because of heavy curvature, impaired clearances, and low standard tracks of Peninsula,

but alteration will become necessary with growth of the district; that a new direct access track from the SP&S main line at North Portland may be feasible; and that if such a track is constructed SP&S and UP have assured the Port of Portland they would provide service similar to that now available in the southwest part of the district. SP&S has made no decision respecting the planned additional access route to Rivergate. It expects to provide adequate switching service into the area as required.

The SP&S parent companies' ownership is in issue in [the *Northern Lines* case] *** Pursuant to proposals therein, on October 26, 1966, Milwaukee entered into a written agreement with GN, NP, Chicago, Burlington & Quincy Railway, SP&S, and the New Company (The Great Northern Pacific & Burlington Line, Inc.), which as pertinent provides:

Effective upon the consummation of the consolidation proposed in Finance Nos. 21478, et al., the Milwaukee shall receive all of the six (6) conditions as sought by it in the aforesaid proceedings, as follows:

Condition No. 2—Entry into Portland and Trackage Rights between Longview Junction and Portland.

Provisions of the agreement relating to implementation of condition No. 2 require the New Company or of SP&S, where possible, to grant Milwaukee trackage rights over present NP and SP&S tracks between Longview Junction and Portland, including the right to serve on an equal basis all present and future industries at Portland and intermediate points and the use of New Company facilities at Portland necessary for the switching of traffic to other railroads and industries. There is no specific reference therein to North Portland, or use of the North Portland interchange tracks.

UP, a class I railroad corporation, operates over trackage extending (1) from Seattle to Portland, (2) from Portland, through O.T. Junction and Hinkle, Oreg., Pocatello, Idaho, and Cheyenne, Wyo., to Omaha, Nebr., (3) from Cheyenne, through Denver, Colo., to Kansas City, Mo., (4) from Spokane, Wash., to Hinkle, (5) from O. T. Junction, Oreg., to Bend, Oreg., and (6) from Pocatello to Los Angeles, Calif. UP connects at Bend with GN. *** UP tracks enter Portland from the east forming a great loop extending from a wye near Troutdale, 14 miles east of the Willamette River at Portland. One track extends from Troutdale generally west parallel with the Columbia River through Kenton Yard, Peninsula Junction, across the SP&S-NP tracks which enter Portland from the north, thence through Barnes Yard to the southwestern side of Rivergate and Terminal No. 4, and returns along the north side of the Willamette River through St. Johns Junction located in Swan Island Industrial Park, through Albina past the entrance of the steel bridge (which affords access to the Portland Terminal Company's yard and depot in downtown Portland) to East Portland (junction with SP), thence generally east through Sullivan Gulch to Troutdale. Track at the west end of the loop near Barnes Yard jointly owned by SP&S connects with Rivergate where UP has served Ash Grove Lime and Cement Company. An OWR&N *** track segment extends from North Portland interchange tracks, through St. Johns Junction, and Albina Yard to East Portland. This *** main track, was mentioned in connection with SP&S tracks. It crosses the western end of the UP loop as does the SP&S-NP tracks west thereof. This segment of track is of particular significance in these proceedings. SP traffic now moves or is expected to move over it. An issue respecting congestion of traffic on the track segment is raised by UP in its opposition to the SP proposals. The distance over the segment from

North Portland interchange tracks to the north end of Albina Yard is 5.2 miles. From the connection of the North Portland interchange tracks with Peninsula over the OWR&N tracks to its intersection with the UP track at Peninsula Junction is about 2.04 miles. At this intersection connections permit switching in four directions. Operation over the turnouts there is limited to 15 miles per hour. Near this intersection UP also has a bypass track which will accommodate about 10 cars. The distance from Peninsula Junction over the segment south through a 1-mile tunnel to St. Johns Junction is about 2.16 miles and the distance beyond St. Johns Junction over the segment to the north end of Albina Yard is 1.02 miles. The track segment generally is level with the exception of the 5/10 of 1-percent grade increase from Albina Yard to the center of the tunnel. There is only one significant highway grade crossing on the segment at Columbia Boulevard which has a flashing light signal. There are also two or three private grade crossings near Peninsula Junction. Between Albina Yard and North Portland there is a 131-pound single-line track laid on rock ballast having no curves which create operating problems. Operation over the segment of track between Peninsula Junction and Albina Yard is presently controlled by a central traffic control system from Albina Yard. Albina Yard is a large and important classification and transfer yard of UP including about 44 tracks which will accommodate from 15 to 20 cars each extending about $\frac{3}{4}$ of a mile in length. The Willamette River lies along the western side of the yard and a super highway and a bluff lie along its eastern side limiting expansion. However, a map in evidence reveals that the yard at its center is about 500 yards wide and near its south end 666 yards wide. Most UP traffic to or from the Portland area moves through this yard. There is a 400 by 150-foot freight house at the south end of the yard. This is

used in part as a salvage depot by UP and in part by shipper lessees. All of the tracks are used for switching purposes by UP. It endeavors to keep open one or two of the center tracks in the yard to accommodate through traffic. None of the tracks are permanently designated as running tracks, although a substantial amount of through traffic moves through the yard. UP operations at Albina Yard are represented as taxed to capacity, with no room for expansion there. Switch engines operate out of there to serve Kenton Yard, North Portland Barnes Yard, East Portland, Sullivan Gulch, and Portland Terminal Company. They move, in addition to freight, passenger trains to and from Portland Station. Two such trains operate each way daily through Sullivan Gulch. Other passenger trains moved by engines from Albina operate out of Portland Station over the SP&S main line through North Portland and not through Albina Yard. Five UP freight trains operate each way daily over the track segment between Albina Yard and North Portland Junction. Delays at North Point Junction interlocker are not uncommon with some delays as long as 80 minutes. SP uses the track between Brooklyn Yard and Albina Yard for freight moving to and from North Portland. The speed of traffic through the interlocker at East Portland is limited to 8 miles an hour. SP proposes to handle cars from Brooklyn to North Portland. UP represents that if the SP applications are granted congestion would occur principally on the single-track segment between St. Johns Junction and Peninsula Junction; that three-fourths of the UP trains arriving at Albina Yard via Kenton are delayed from 15 to 180 minutes because of Albina Yard congestion. Also, there is a 1.2-percent grade on the UP track 1 mile east of East Portland which tends to retard car movements. Usually engines stationed at Kenton Yard are used for switching

between Albina Yard and North Portland. There has been a consolidation of the Kenton Yard and Terminal No. 4 engines to eliminate congestion of traffic. There were about 40 to 56 switching [transfer and train] moves daily in the Peninsula Junction area during 1967. For example, an average of 40 ... [switch transfer or train moves] a day moved between October 1 through October 14, 1967, and an average of 37 ... [switch, transfer or train moves] a day between January 14 through 27, 1967. From January 26 through January 27, and from October 1 through October 14, 1967, traffic clearances in excess of 30 minutes between Albina Yard and North Portland interchange occurred from about 4 to 11 times or an average of 7.5 times daily. There are four transfer SP trains handled daily at Albina Yard. About 6 UP trains move each way in addition to trains of NP, GN, and SP&S over tracks north of North Portland or a total of about 55 trains daily use those tracks. About 30 minutes time should be required to operate a switch engine with a few cars over the cleared track segment between North Portland and Albina Yard. However, an average of about 30 hours has been required for the movement of SP cars and also those of UP between Albina Yard and North Portland. UP does not consider a 30-hour transit time adequate service and has endeavored to reduce the running time by the described consolidation of its Kenton-Terminal No. 4 terminal service, by the establishment of the above-described central traffic control, by breaking trains at Seattle, Dow, Hinkle, and Pocatello to avoid switching at Albina Yard, and by increased operation through Sullivan Gulch.

There is a double track extending from the south end of Albina Yard to East Portland and the junction of the SP there. Even though traffic congestion exists at Albina Yard,

UP nevertheless represents that it can provide Rivergate any service through Peninsula needed and represents that its present service in the involved area meets shippers' demands for service. The steel bridge crossing the Willamette River at East Portland is jointly owned by SP and UP. The bridge, as noted, allows UP and SP to connect with the tracks of the Portland Terminal Company, the Portland Yard, the SP&S Hoyt Street Yard, and the SP&S and NP Guild's Lake Yard, which permits SP to interchange traffic at the latter yard with SP&S or NP. Portland Terminal Company is a terminal switching company owned 40 percent by UP, 40 percent by NP, and 20 percent by SP.

UP, as noted, physically connects with Peninsula at North Portland, an interchange junction point and station on GN, NP, SP&S, and UP, within the Portland switching district. The physical interchange of line-haul traffic moving by UP or its connections is performed by UP. On traffic moving to and from SP via SP&S, NP, GN, and UP from and to industries located on Peninsula, SP absorbs the Peninsula's rate division, and on traffic in which Milwaukee participates through joint routings, no switching charges are passed on to the shipper or consignee. UP expects to continue its policy of permitting line-haul carriers having no physical interchange with Peninsula to reach, through existing joint rates and routes, industries on the latter's line.

At the request of the Port and the Commissioner of Public Docks, a railroad conference was held at Portland on June 20, 1967, to consider elimination of noncompetitive switching charges to or from industries located on the Port's property at Swan Island (Albina) and Rivergate to encourage industrial development there. Thereafter, railroads participating in the conference agreed to establish

a single basis of switching charges at all common points within Northern Idaho, Washington, and Oregon, with switching charges to be absorbed by the line-haul carriers where the line-haul minimum revenue is \$100 a car after absorption, and no absorption of switching charges when specific tariff rate items are excluded. UP represents that when the agreement is implemented all industries within the Portland switching district including the Port's property area served by Peninsula, and points in North Pacific Coast territory will be on a competitive relationship except for the two conditions noted.

SP, a class I railroad, operates over trackage generally extending (1) from Portland south through Eugene and Klamath Falls, Oreg., Sacramento, San Francisco, and Los Angeles, Calif., Phoenix and Tucson, Ariz., El Paso and Houston, Tex., to New Orleans, La., (2) from San Francisco through Sacramento, Calif., Reno, Fernley, Weso, and Alazon, Nev., to Ogden, Utah, and (3) from Fernley to Klamath Falls. Service over these tracks is rendered by SP at many points south and east of Portland in Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana. At Portland, the northern terminus of SP tracks, as noted, connects with those of UP at an interlocking plant about 375 feet south of the eastern end of the UP-SP steel bridge across the Willamette River at Portland. SP maintains a large switching yard at Brooklyn known as the Brooklyn Yard about 2.6 miles south of the interlocker. Trains moving into Portland from the south over SP lines are generally sorted and blocked at Eugene, Oreg., about 125 miles south of Portland and move to Brooklyn Yard for further blocking if required before they are received by UP at East Portland. SP traffic to or from Peninsula moves principally over UP tracks from East

Portland through Albina Yard, St. Johns Junction to the North Portland interchange tracks. In some instances SP traffic also moves from East Portland across the steel bridge to the Portland Terminal Company yard, thence to Hoyt Street Yard for interchange with SP&S and movement over the SP&S main-line tracks to North Portland interchange. The distance from Brooklyn over the UP tracks to Peninsula is about 8.59 miles. An SP engine and crew is used to move cars from Brooklyn through East Portland, thence over the UP tracks to Albina Yard where they are received by UP for movement to Peninsula. The switch engine and crew of SP performs service from North Portland to Albina Yard as UP's agent. Similarly an SP switch engine and crew moves cars from Brooklyn over the alternate SP&S route to North Portland by operating as far as the Portland Terminal Company's yard where they are received by Portland Terminal Company, as an agent for the latter company. SP represents that if it is granted bridge trackage from the interlocker at East Portland to Peninsula at North Portland interchange tracks its engines and crews can operate from Brooklyn to North Portland. About 2 hours switching time would be required for a SP engine and crew to operate between Brooklyn and Albina Yard and an additional 1.5 hours between North Portland and Albina Yard or a total of about 3 hours and 30 minutes.

There are delays in the movement of traffic over the UP tracks between those points. A 10-percent random sample consisting of 42 cars (from a total of 410 cars) of SP traffic switched to and from Peninsula during 1967 in evidence reveals, among other things, an average of 32 hours and 10 minutes required for car movements from the SP interchange points to Peninsula when switched by UP or SP&S and an average of 55 hours and 16 minutes when

moved from Peninsula to the SP interchange point. SP represents that 30 hours or more required for the movement of cars between Albina and North Portland interchange is excessive and that SP with bridge rights can provide faster service. From 25 to 57 trains, or an average of 40, move over the UP tracks between Albina Yard and North Portland each 24 hours. SP anticipates no operating difficulties or labor complication in connection with its proposed operation over the described UP North Portland-Brooklyn Yard tracks. During 1967 about 490 cars were moved between Brooklyn Yard and North Portland interchange tracks over the described routes. It further represents that the proposed operation of unit trains of iron ore over the described UP tracks to and from Peninsula is feasible.

Milwaukee, a class I railroad, operates over main lines from Seymour, Ind., through Chicago, Ill., Minneapolis, Minn., Seattle and Tacoma, Wash., to Longview, Wash., a point on the Columbia River about 46 miles from Portland. Its main lines also extend from Chicago to Council Bluffs, Iowa, and to Kansas City, Mo. It serves the grain producing areas in Montana and eastern Washington and provides a connecting carrier service from those points to Portland. It also serves much of the forest products producing area in Idaho and Washington and industries in Tacoma, Seattle, Everett, and Bellingham, Wash., north of Portland. Also, service is rendered at the industrial cities, among others, of Chicago, Milwaukee, St. Paul, Minneapolis, Omaha, Kansas City, Davenport, Rock Island, Moline, and Bettendorf. At the time of hearing it performed no physical operations to and from the Portland area and was awaiting final disposition and consummation in . . . [of the *Northern Lines* case]. If the Milwaukee petition herein for inclusion is authorized it expects to operate fast trains between Chicago,

Seattle, and Portland and between Portland and Sumas, Wash., with connection at the latter point with British Columbia railroads. However, such service cannot be established if terminal delays occur at Portland which offset the proposed service advantages. Its proposed service at Portland includes physical operation of its equipment to and from the Peninsula interchange tracks at North Portland. All the industries on Peninsula would be served as on-line industries with no absorption of switching charges. Despite postponement of the effective date of consummation in the *Northern Lines* merger case pending consideration of various petitions, Milwaukee expects the merger will be confirmed and consummated within a reasonable time, and contingent upon its extension of operations to Portland, requests joint and equal ownership of Peninsula stock with other trunklines and proposes to assume its share of the portion of the stock and indebtedness as set forth in the application. Its joint ownership is considered essential to its Portland operation to industries located on Peninsula and at Rivergate. Peninsula is the only terminal facility at Portland not owned by trunklines presently serving that point.

Milwaukee has a centralized, computerized expedited service for tracing, reconsignment, and diversion of cars and for the elimination of car delays. It owns 39,000 freight cars and in 1967 it transported 61,140 trailers in its trailer-on-flatcar (TOFC) service. It maintains facilities at various points for the loading and unloading of this type of traffic. Since 1963 it has maintained a 55.5-hour schedule service from Chicago to Seattle and 67.25-hour return. . . .

Milwaukee is not owned or controlled by any other railroad and does not own or control any other parties to the instant proceedings directly or indirectly. Its officials and directors have no common interest in such parties to this

proceeding. Milwaukee does own an interest in a number of other transportation companies not particularly pertinent to these proceedings.

INTERVENERS' EVIDENCE

The Port's position is that Rivergate's development requires services of all the involved line-haul rail, barge, and ocean vessel carriers serving Portland with service at competitive rates, and that all the rail applicants should be afforded equal operating access to Rivergate. It expresses a need for fast reliable freight service at Rivergate through Peninsula provided on equal terms by all present and future railroads serving Portland which can be accomplished by joint ownership. The Port desires the services of all the railroads to facilitate to mechanized rapid handling of liquid and dry bulk commodities, containerized commodities, and other general freight between Rivergate and points throughout the United States. It asserts that singlecar switching to and from small industries with so-called one-car sidings has become obsolete. Such switching is uneconomical because of engine and crew costs, and obsolete because trucks can more effectively perform a small shipment service.

The western district class I railroads traffic increased 36.2 percent in the 9 years following 1958. The Port's transportation consultant estimates that by 1990 traffic of those railroads will double, if adequate rail facilities are provided, and that Portland would share in its growth. Adequate facilities would include the most efficient mechanically fitted freight handling terminal with low freight handling costs possible through greater movement of intermodal traffic. After Rivergate's development, the Port estimates that from 500 to 600 cars or an average of 20,000 tons daily will move to and from the district; that daily service will

require 1 unit train, 1 semiunit train, 1 semiunit TOFC train, 2 industry trains, and 2 switching runs, and that the types of service would include provision for (1) bulk commodity unit trains (never uncoupled), (2) semiunit-train service for handling the less mechanized traffic to move in blocks of 40 to 150 cars, (3) TOFC service, and (4) miscellaneous and switching service. Rivergate is represented as affording opportunity for use of new technology in rail terminal service by use of unit and semiunit trains, and the elimination of lost car movement time usually incurred at terminals. UP and SP&S, as noted, are the only carriers presently having direct access to Rivergate through the eastern and western entrances. The Port indicates that unless the four applicant railroads are afforded equal access to Peninsula its owners would create unsatisfactory non-single-line switching conditions for the other lines; that unit-train bulk traffic is impeded equally as much by switching delays as by traffic interchanges; that if Milwaukee traffic is switched by SP&S or UP before reaching Peninsula, Milwaukee's single-line efficiency to and from points in such States as Indiana and Iowa will be impaired; that if SP traffic is similarly switched, its single-line advantage to and from such points as Medford, Reno, Stockton, San Francisco, Fresno, Phoenix, El Paso, New Orleans, and Memphis will be limited. The Port represents that existing uncorrelated transfer of freight cars within the Portland switching district will not meet Rivergate's rail service needs; that uncoordinated switching operations at Portland result in a minimum 24-hour transfer time, and sometimes 3 or 4 days for operations across the switching district compared to a few hours required for cross-city truck movements. Peninsula assertedly will be useful to Rivergate only if it can handle unit trains of 100 cars or more which Peninsula's track facilities presently will not accommodate.

Economic and statistical evidence relating to Rivergate presented by the Port's Research and Planning Department reveals, among other things, the following: The Columbia-Willamette system is the second largest river improvement project in the United States. The Federal Government and the Port together, up to December 31, 1967, expended \$120 million in improving the system. Ultimate public and private investment at Rivergate is expected to exceed \$500 million. The Research and Planning Department is responsible for obtaining the described D.M.-J.M. commercial engineering Rivergate survey, report, and recommendations. The Port's long experience in marketing and research and its recognition of current technological transportation changes influenced its support of joint ownership of Peninsula by all the line-haul railroads serving Portland. The value of waterborne imports and exports in the Portland Custom District increased 313 percent from 1954 to 1966, compared to increases during that time of 201 percent at Los Angeles, 128 percent at San Francisco, and 132 percent at Washington ports. The Portland oceanborne traffic increased from 8,535,686 short tons in 1955 to 10,489,989 tons in 1965; or 22.9 percent.

The Portland Commission of Public Docks, City of Portland, favors joint ownership and operation of Peninsula and direct access to Rivergate by all line-haul railroads serving Portland. It is particularly interested in the transportation cost to shippers for movements to and from Rivergate, and asserts that noncompetitive transportation costs there would preclude consideration by industries of Rivergate as an industrial site. The Commission represents that establishment of a \$100 per car line-haul revenue minimum as proposed in the Conference of Railroad Presidents June 20, 1967, agreement to establish a single-basis switching charge at competing Pacific Northwest points would

adversely affect Rivergate shippers' interest without equal ownership by all the line-haul railroads in Peninsula. Railroads with no such interest for economic reasons would be required to assess switching charges, while owner-carriers subject to their own tariff provisions could absorb switching costs on the basis of a lower applicable car minimum revenue. Numerous illustrations of instances in which this might occur are in evidence. For example, a nonowner carrier subject to the P.C.F.B. tariff No. 35, I.C.C. 1098, item 685, naming a rate on cans, fibreboard, set up, of 40.5 cents a hundredweight, 14,000-pound minimum weight, from Portland to Banks, Oreg., representing a minimum-car revenue of \$84.70 would be required to assess an additional charge while an owner-carrier would absorb such a charge. Also, pointed out is the second exception to the proposed switching agreement which provides that switching charges will not be absorbed in instances where excluded by specific tariff provision.

The Public Utility Commissioner of Oregon, favors joint ownership of Peninsula by all line-haul carriers serving Portland. Evidence presented by the Commissioner covers geographical and physical characteristics of the involved transportation area. It reveals, among other things, that in addition to the five major railroads, NP, GN, SP&S, UP, and SP presently serving the Portland area, 275 motor carriers operate to, from, or within Portland. Fifty-one of these carriers are regular-route general-commodity carriers all authorized to serve Rivergate within the Portland commercial zone. Tables in evidence presented by the Commissioner show that the annual operating revenue of Peninsula has ranged from a high of \$161,292 in 1956 to a low of \$75,949 in 1963. Its average revenue per car for switching

service increased from \$7.93 in 1950 to \$27.71 in 1966. Peninsula's net operating income has ranged from \$39,253 in 1955 to a deficit of \$4,153 in 1962. While it operated at a deficit in 1962 and 1963, its income has since considerably improved. The commissioner represents that the future need of Peninsula is closely related to development of Rivergate and the granting to SP and Milwaukee of direct access to Peninsula would provide present and future industries served by Peninsula direct service by all line-haul railroads serving Portland.

Through rates and charges of SP&S, GN, NP, and UP are presently applicable to industries served by Peninsula. SP does not interchange traffic at Peninsula and depends upon SP&S or UP switching service between the SP interchange at Portland (Union Station) or East Portland and the North Portland interchange. SP presently absorbs the switching charges on traffic moved to or from Peninsula subject to a per-car minimum charge of \$67 plus increases. Peninsula industries pay UP or SP&S for switching between North Portland and East Portland when the published through rates do not provide for absorption of the switching charge. For example, a switching charge is applicable to noncompetitive traffic originated by SP in Oregon moving to Peninsula.

Zellerbach, the second largest producer of paper and paper articles in the United States and also a producer of industrial chemicals, has its principal manufacturing and shipping facilities located in the Portland area. It also has paper mills at Camas, Wash., and Wauna and West Lind, Oreg. It ships in excess of 1,100 carloads of the described commodities each month from the Portland area to

various points throughout the United States. Zellerbach has or expects to establish four facilities in the Portland area. One is a distribution complex, Water Way Terminal Company, served by the Portland Terminal Company and Western Transportation. The latter is a certified water carrier owned by Zellerbach which has connections with a number of other carriers. At the time of hearing, Water Way Terminal Company facilities were being expanded and Zellerbach was negotiating for the purchase of a 1,500-waterfront property located adjacent to Ashgrove Lime Company at the western end of Rivergate. The second is a pole yard located on 40 acres of land owned by Zellerbach at the eastern end of Rivergate. The pole yard, as noted, is served by Peninsula. The third facility is the planned construction of a 200,000-square foot warehouse to be located on 44 acres of land purchased from Swift & Co. At the time of hearing the land purchase was waiting escrow clearance. The land is about 500 yards east of the SP&S main line at North Portland. The warehouse is expected to be used for the storing and distribution of products of the adjacent Zellerbach Flexible Packaging Division plant, the fourth facility.

During the 12 months ending November 30, 1967, 365 freight cars moved to or from the Flexible Packaging Division plant and 638 freight cars (177 shipments) to and from the pole yard. The shipper's poles now move in 65-foot drop-end gondola cars supplied by the rail carriers. Sixty-four percent of the 177 pole shipments involved delays due to Zellerbach's inability to obtain suitable cars when needed. The delays ranged from 1 to 26 days, or an average of 4.5 days each.

Zellerbach supports each of the applications and petitions because authorization of the proposals would increase the number of carriers having direct access to Peninsula and increase its ability to obtain suitable cars, and because it desires service at its Rivergate facilities comparable to other transportation at Portland. It represents that such access could result in the elimination of a 22-degree curve in the present Peninsula tracks so that 85-foot pole cars can be accommodated thereon. Zellerbach represents that if SP had direct access to its pole yard, it would request that carrier's service more often. The Zellerbach representative could recall no instances in which it paid separate switching charges for service to and from its facilities located on Peninsula. Zellerbach indicates that the greater the number of connecting carriers required for handling a shipment the greater the number of rate divisions and cost of service.

Oregon Steel Mills, a division of Gilmore Steel Corporation of San Francisco, within the past 2 years has acquired 152 acres of Rivergate land where it is presently erecting a new steel plate mill. Several phases of construction of the mill are contemplated. The first phase cost is \$35 million. Upon completion of the first phase mill, it will produce 200,000 tons of steel plate annually and upon completion of the entire mill the ultimate mill's capacity will be 700,000 tons. The mill site was located at Rivergate because it affords room for the mill's expansion and for the location of related steel fabricating industries near it and because Rivergate is considered by this shipper as a transportation hub. There are presently steel plate mills located at Provo, Utah, and Fontana, Calif. The Rivergate mill will be the first producing steel plate mill located in the Pacific North-

west and its location will result in the establishment of a steel basing point at Portland, whereas up to this time the steel basing points have been at Provo and Fontana. Ore for use at the mill presently will be provided by Marconi Company transported by water carrier from Peru to Rivergate. However, Gilmore Steel Corporation owns large iron ore deposits near Mount Shasta, Calif., near a line of the SP. Arrangements are in progress for procuring iron ore at the Shasta location. Oregon Steel Mills expects to ship unit trains of ore from Shasta to the Rivergate mill and has obtained assistance and information respecting proposed transportation costs from SP, which in turn procured proposed costs of switching at Portland from UP. SP, prior to the filing of its applications, proposed to transport the shipper's ore from Shasta to the UP Portland interchange in SP equipment, including all terminal service charges at Shasta at \$3.85 a gross ton subject to a tariff docketing proposal, and information received from SP respecting the proposed UP switching costs which was confirmed through the UP rate department was \$0.23 a gross ton from the UP-SP interchange at Portland to Rivergate. Oregon Steel Mills prefers a single traincrew and through round trip unit-train service. UP indicates it cannot provide this type of service at Portland because union contracts require the use of local power equipment and the payment of the Portland crew for a minimum worktime. The shipper represents that it would start mining ore at Shasta as soon as economically feasible, that its ore can move economically only in unit trains in the service of a single-carrier with no connections and that it supports the SP applications to enable direct access to its Rivergate plant by SP through North Portland. The shipper is aware that major fill and track construction would be necessary before operation from Shasta through

North Portland becomes possible. It indicates that Rivergate is being developed by use of public tax money and it believes direct access to Rivergate should be afforded through all rail carriers.

Collier Carbon & Chemical Corporation, a Union Oil Company subsidiary, is constructing a new \$2 million distribution facility north of the Ashrover Lime Company plant on the western side of Rivergate. The plant, to be in operation by the Fall of 1968, expects to use the direct service of SP, among other rail carriers, for the movement of its products from Rivergate. Urea, used in the manufacture of resins and fertilizer and as a cattle feed ingredient, is to be shipped by water carriers to the facility and to be re-shipped by rail, truck, and water carriers to its customers. It is particularly interested in obtaining SP service for movements to western Oregon points and supports the SP applications because direct SP service would provide it suitable transportation to western Oregon points within provision of reasonable transit time, car availability, and rates. It has no preference as to the carrier switching its traffic to a belt-line or terminal company.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 6th day of June 1969.

Finance Docket No. 24679

SPOKANE, PORTLAND & SEATTLE RAILWAY
COMPANY AND UNION PACIFIC RAILROAD
COMPANY—CONTROL—PENINSULA TERMINAL
COMPANY

Finance Docket No. 24890

SOUTHERN PACIFIC CO.—COMMON USE OF
TERMINAL FACILITIES—PENINSULA
TERMINAL CO.

Finance Docket No. 24891

SOUTHERN PACIFIC CO.—COMMON USE OF
CERTAIN TERMINAL FACILITIES—UNION
PACIFIC RAILROAD CO.

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, in Finance Docket No. 24679, subject to the conditions referred to in said report, acquisition by the Spokane, Portland and Seattle Railway Company and the Union Pacific Railroad Company of control of the Peninsula Terminal Company through the purchase of its capital stock, as described in said report and under the terms and conditions found therein to be just and reasonable, be, and it is hereby, approved and authorized;

It is further ordered, That the petitions of the Southern Pacific Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for inclusion in the transaction approved and authorized above in Finance Docket No. 24679, as described in said report, be, and they are hereby, denied;

It is further ordered, That in Finance Dockets Nos. 24890 and 24891, the applications of the Southern Pacific Company for common use of the facilities of the Peninsula Terminal Company and of certain trackage of the Union Pacific Railroad Company as described in said report, be, and they are hereby, denied; and

It is further ordered, That this order shall take effect and be in force from and after 35 days from the date of its service; that if the authority granted in Finance Docket No. 24679 is not exercised within 180 days from said effective date, this order shall be of no further force or effect; and that if the authority granted in Finance Docket No. 24679 is consummated, the applicants therein shall confirm in writing to this Commission, immediately thereafter, the date on which consummation has actually taken place.

By the Commission, division 3.

H. NEIL GARSON,
Secretary.

(SEAL)

INTERSTATE COMMERCE COMMISSION

Served September 24, 1968

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D.C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions. If the recommended order becomes effective as the order of the Commission, a notice to that effect, signed by the Secretary, will be served.

• Finance Docket No. 24679¹

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY—CONTROL—PENINSULA TERMINAL COMPANY

Decided.....

In Finance Docket No. 24679 and related petitions, control by Spokane, Portland & Seattle Railway Company, Union Pacific Railroad Company, and the inclusion therein of Southern Pacific Company, through pur-

1. This report also embraces Finance Docket No. 24890, Southern Pacific Co.—Common Use of Terminal Facilities—Peninsula Terminal Co., and Finance Docket No. 24891, Southern Pacific Co.—Common Use of Certain Terminal Facilities—Union Pacific Co.

chase of all outstanding stock of Peninsula Terminal Company, and sale of an equal interest therein, subject to conditions subsequent, to Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and authorization of trackage use for access to Peninsula Terminal Company, found to be consistent with the public interest, and application and petitions in all other respects denied. Conditions prescribed.

In Finance Docket Nos. 24890 and 24891, common use by Southern Pacific Company of the terminal facilities, including trackage of Union Pacific Railroad Company between Peninsula Terminal Company and the Southern Pacific Company-Union Pacific Railroad Company connection at East Portland, Oreg., found to be in the public interest and to be practicable, without substantially impairing the ability of Union Pacific Railroad Company to handle its own business, and applications in all other respects denied. Conditions prescribed.

Hugh L. Biggs, James Warren Cook, Richard Devers, Randall B. Kester, F. J. Melia, R. Paul Tjossem, and John F. Weisser for applicants in Finance Docket No. 24679.

Charles W. Burkett, W. Harney Wilson, and Oglesby W. Young for applicants in Finance Docket No. 24890 and No. 24891, and petitioner in Finance Docket No. 24679.

Raymond K. Merrill, Warren H. Ploeger, Thomas H. Ploss, and E. O. Schiewe for petitioner in Docket No. 24679.

Lloyd A. Combs, William M. Dunegan, John L. Green, Richard H. Kraushaar, Robert K. Little, Hollis Menow, Harold A. Ross, Edgar E. Smith, Homer C. Watson, and Milton A. White for protestants in each proceeding.

Dale T. Crabtree, Samuel P. Delisi, Milton A. Mowat, Richard W. Sabin, Robert W. Skirvin, Lofton L. Tatum, Robert Y. Thornton, and Henry M. Wick, Jr. for intervenors in each proceeding.

REPORT AND RECOMMENDED ORDER

BY SAMUEL C. SHOUP, HEARING EXAMINER

In Finance Docket No. 24679, by joint application filed July 25, 1967, Spokane, Portland & Seattle Railway Company (SP&S) and Union Pacific Railroad Company (UP), pursuant to section 5(2) of the Interstate Commerce Act, seek authority to acquire control of the Peninsula Terminal Company (Peninsula) through purchase in equal shares of all of Peninsula's capital stock.

By petition filed August 23, 1967, Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee) seeks inclusion in the proposed transaction in Finance Docket No. 24679 and if consummated authorized (1) to purchase one-third of the outstanding capital stock of Peninsula (2) to pay one-third of the contribution to capital of \$70,000 to cover the purchase of two diesel locomotives, and (3) to acquire rights over track jointly owned by UP and SP&S from the main-line of SP&S to Peninsula's lines upon reasonable terms and conditions as negotiated by the parties, or as found just and reasonable by the Commission. Separate replies to the petition were filed December 29, 1967, by UP and SP&S. UP contends generally (1) that Milwaukee is not a railroad in the territory as used in section 5(2) of the act because it does not serve the Portland terminal area, (2) that if Milwaukee is granted trackage rights between Longview Junction and Portland as a condition or to approval of the Northern Lines merger, in Finance Docket No. 21478, *Great Northern Pac. Merger-*

Great Northern, 331 I.C.C. 869, nevertheless it would be unable to serve the Portland Terminal area unless there is a separate application and Commission's approval of operations under such trackage rights, (3) that if Milwaukee operates to and from the Portland Terminal area, it would not connect with Peninsula because the segment of track between Peninsula and the Northern Pacific Railway Company (NP)-SP&S main line is jointly owned in whole or in part by UP, NP, SP&S, and Peninsula, and joint use of such trackage cannot be granted in these proceedings, and (4) that joint stock control as requested is not in the public interest and would lead to cumbersome, confused, and divided management. SP&S in its reply generally alleges that inclusion of Milwaukee as a joint stock owner of Peninsula is not in the public interest and that joint use of trackage at North Portland to reach tracks of Peninsula is not in the public interest because of joint carrier use of the interchange tracks there.

By amended petition filed November 29, 1967, Southern Pacific Company (SP) requests as a condition to approval of the application in Finance Docket No. 24679, (1) that SP be included as an equal joint owner of Peninsula, and (2) that SP be granted bridge trackage rights over UP's main line, and terminal trackage between Peninsula and the SP-UP track connection at East Portland, Oreg., as a condition to participation in joint ownership of Peninsula under section 5(2)(d) of the Act, and in event either or both of the applicants decline to participate in the acquisition subject to such condition an order be entered pursuant to section 3(5) of the Act authorizing SP to use the said UP trackage. UP and SP&S by joint reply thereto, filed December 13, 1967, (1) contend that to grant petitioner's request would unduly broaden the issues, and (2) indicate

that such a request should be made in a separate proceeding pursuant to section 3(5) of the act.

In Finance Docket Nos. 24890 and 24891, by separate applications each filed December 19, 1967, Southern Pacific Company, pursuant to section 3(5) of the act, seeks, in Finance Docket No. 24890, (1) common use of the terminal facilities of Peninsula and (2) bridge trackage rights over UP between Peninsula and the SP-UP connection at East Portland, Oreg., and in Finance Docket No. 24891, common use of the terminal facilities of UP between Peninsula and the SP-UP connection at East Portland, Oreg. These applications were filed, in addition to the above described SP petition, to assure relief both under section 5(2)(d) and section 3(5) of the Act because of the permissive nature of conditional grants by the Commission under section 5(2) which the parties, in their discretion, may elect to exercise. *Houston Belt & Term. Ry. Co. Control*, 275 I.C.C. 289, 312.

The applications, and the petitions and replies thereto were referred to the examiner for hearing on a consolidated record and the recommendation of an appropriate order thereon. Hearing was held at Portland, Oreg., on February 26 through 29 and March 1, 1967. Eight railway employee organizations² oppose each of the applications. The Port of Portland Commission, the Public Utilities Commissioner of Oregon, and Crown Zellerbach Corporation intervened in

2. Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Engineers Division representing employees of SP&S; Brotherhood of Locomotive Engineers (Union Pacific Railroad Northwest District, Oregon Division); Brotherhood of Railway Clerks representing employees of Portland Terminal Railroad; Brotherhood of Locomotive Engineers of Portland Terminal Railroad Company; Southern Pacific Railroad Yardmasters of North America, Inc.; Railroad Yardmasters of North America, Inc.; Portland Terminal Railroad Co.; and Switchmens' Union of North America.

each of the proceedings in support of positions hereinafter described. UP and SP&S oppose the SP applications in Finance Docket Nos. 24890 and 24891 and request that the petitions of Milwaukee and SP be denied. The parties hereto are hereinafter referred to by appropriate short titles. Briefs were filed separately by each of the applicants and petitioners in the proceedings, and by The Port of Portland Commission (The Port) and the Public Utility Commissioner of Oregon and Brotherhood of Locomotive Engineers.

Peninsula is a terminal railroad Oregon corporation subject to Part I of the Interstate Commerce Act engaged in switching operations at North Portland, Oreg. North Portland is within the Portland switching district. Portland is a major deep channel seaport, transportation, and distribution center serving the Pacific Northwest and the Continental United States. The western end of Peninsula's main line extends to a Crown Zellerbach pole yard (See Map, Appendix A) at the eastern tip of Rivergate Industrial District (Rivergate), hereinafter described, affording potential connection with a proposed Rivergate rail system and the impetus for unusual carrier, industry, and public interest in these proceedings. Peninsula owns no tracks within Rivergate. It serves the pole yard by using industrial tracks of Zellerbach there. Peninsula was established as an essential for operation of Portland Union Stockyards (Portland Stockyards) to facilitate handling livestock, and to provide a rail connection between the stockyards and trunk-line railroads serving the Portland area. The Commission in Docket Number 8389 on October 18, 1930, authorized Peninsula to operate as a terminal switching railroad. Sometime prior to 1936, Swift & Company acquired interests in various stockyards and terminal rail facilities, in-

cluding the Portland Stockyards and Peninsula which the former owned. Pursuant to a consent decree obtained by the U.S. Attorney General in a U.S. Court injunction proceeding brought under the Sherman Act and the Clayton Act, Swift divested itself of stock interest in certain stockyards and terminal carriers. One of the properties, Portland Stockyards, was sold to United Stockyards Corporation (United), presently a division of the latter. Since January 1, 1968, Portland Stockyards has been leased to and operated by Portland Livestock Market, Inc. (Portland Livestock). Control of Peninsula, through stock ownership by United, was authorized by the Commission, Division 4, on March 9, 1943, in *Stockyards Ry. Co. Control*, 254 I.C.C. 207. United's interest in railroad operations extends only to those necessary for its stockyards' operation. Since it acquired Portland Stockyards, operations there have materially changed. Whereas, it was used to supply cattle for Swift's meat packing operations, it presently is an auction yard. Swift & Company presently processes only agricultural chemicals, hides, and wool at North Portland and the volume of that activity is expected to decline. Crown Zellerbach Corporation (Zellerbach) recently acquired the North Portland Swift property and expects to establish a 200,000 square foot warehouse and an ink manufacturing factory there. Zellerbach also has its Flexible Packaging Division plant at North Portland and operates the above-described pole yard at the west end of the Peninsula line in the Rivergate area. Peninsula serves thirteen industries on its line other than the stockyard. As a result of the changes, Peninsula has become less important to Portland Stockyards and United has no interest in operating a railroad independent of stockyard operations. It therefore proposes to sell all of the stock in Peninsula at a reasonable price established

through a 1962 appraisal by American Appraisal Company and has no preference as to the purchaser. The Commission is represented as having accepted the valuation of the properties of Peninsula based upon historical book cost. The agreed purchase price of Peninsula under a contract of purchase dated February 28, 1967, between United and SP&S and UP is a total of \$299,405 for all outstanding shares of common stock of Peninsula plus a sum of \$70,000 to reimburse United for two switch engines sold by United to Peninsula representing an unsecured account payable to United. Settlement to be made by checks of purchasers upon approval of the transaction. The appraisal was based on empty land, plus local costs of roadway and structures, less depreciation. Adjustment of the appraisal, at the time of contract of sale was made only as to rolling stock, working capital, and miscellaneous betterments. The President of Peninsula represents that the contract price is fair and reasonable.

Peninsula properties consist of 13.17 acres of land, none suitable for industrial development, 15,559 feet of main line track plus spurs and sidings or a total of 3.79 miles of main line and secondary and spur track laid on treated ties in sand with no rock ballast. The distance from one end of the line to the other is about 8,000 feet with a 5-foot elevation to its eastern end. The above-noted two locomotives owned by Peninsula consist of a 50-ton G. E. electric, and the other, a 70-ton Copper Bessimer electric, including tools and parts for operation and maintenance. Tools for track maintenance, a conveyance for workmen, a heated engine house for both locomotives, a yard office (14 feet by 23 feet 6 inches in size), and a sand house (11 feet by 18 feet in size) are also owned.

Officials of Peninsula are T. E. Rockford, President (also an employee of United), R. W. Hunt, Vice-President, C. N. Curtis, Secretary-Treasurer. All except Hunt are stationed in North Portland where they handle accounts, labor, claims, demurrage, and interchange, and clerical work of the carrier. They are all United-Peninsula joint employees. United pays them and bills Peninsula for a portion of their services. Insurance matters of Peninsula are handled by United in Chicago where Hunt is stationed.

Peninsula receives cars directly from and delivers cars to SP&S, NP, UP, and Great Northern Railway Company (GN) (empty and loaded) at North Portland, which total about 30 cars daily handled through the North Portland Freight Station with an office located at the Portland Stockyards. The cars move to or from double main-line tracks jointly owned by SP&S and NP, extending from Vancouver, Washington, south across the Columbia River, through North Portland and across the peninsula at the junction of the Columbia and Willamette Rivers (the peninsula) to SP&S Doan Street Yard and the Portland Terminal Company's Guild's Lake Yard. At North Portland there is, among other things, a head block on the SP&S-UP tracks and a 259.5-foot track extending therefrom to four North Portland interchange tracks 2,400 feet in length which accommodate from 30 to 35 cars each. One, is used by Peninsula for receipt of cars from the trunk lines. The second is used by Union Pacific to receive cars from Peninsula, GN, NP, and SP&S. The third is used by SP&S, NP, and GN to receive cars from Peninsula and UP, and the fourth is an open or running track. Two of the interchange tracks are owned, one-half by Peninsula, and one-half jointly by UP, SP&S, and NP. The other two tracks are owned jointly by UP, SP&S, and NP. The interchange tracks connect directly

with Peninsula's main line track to the north and also with a single-line track of OWR&N (a UP subsidiary) extending about 1.7 miles southerly across tracks of UP to Peninsula Junction, and thence about 2.6 miles through a tunnel near St. Johns Junction to Albina Yard. The interchange tracks are used by Peninsula, UP, NP, and SP&S as joint owners, and by GN under a contractual arrangement. The use includes interchanges between the four trunk lines and also between those lines and Peninsula. Actually about 8,100 cars are interchanged there of which 39 percent represents Peninsula interline business. All the cars are either billed from or consigned to industries in the Portland area. Service at North Portland is provided through a joint local freight agent of the trunk lines who informs Peninsula of industry service requested as to outbound moves. The agent prepares the inbound interchange reports and Peninsula the outbound interchange reports. Outbound bills of lading of the four trunk lines are signed by the joint agent. Expenses of maintaining the North Portland station are prorated among the four lines by car count, loaded and empty, with the joint facility invoice prepared by the operating road, UP, or SP&S. The joint agent recommends no routings for shippers and receives no open-route car orders. Usually there are four deliveries and two pickups daily of cars moving to or from Peninsula by SP&S or UP. Cars from Peninsula could move by UP to the pass near Peninsula Junction, to Kenton Yard (about 2.6 miles southeast of Peninsula Junction) or to Albina Yard. Cars picked up from Peninsula by SP&S usually move to Vancouver. In addition to the above-described North Portland Freight Station, there is a yard office at the eastern end of the interchange tracks. The yard office is maintained jointly by

SP&S and UP, under terms of a 1912 agreement which established the North Portland Freight Station. Four clerks at the yard office are UP employees and four clerks at the North Portland Freight Station are SP&S employees.

Peninsula also provides local intra-plant and intra-terminal service. It has established Local Switching Tariff No. 23, effective September 23, 1965 (not applicable to rail line haul service), which among other things provides a \$22.44 per car charge for each car movement and service charges for the handling of livestock. No other switching tariff is published by it. Peninsula solicits no traffic and traces no shipments moving beyond its line. Revenue from its connecting rail carrier service is derived from a division of revenue, billed and collected by the trunk line, generally amounting to \$29.25 a car when the car revenue exceeds \$60. The agreed rate divisions were established by Joint Division Sheet 8-R issued by North Pacific Coast Freight Bureau, Seattle, Wash., effective July 1, 1964. Usually the line-haul carriers absorb the division charges. Its locomotives and crews operate two 8-hour shifts each day of the week, one from 9:00 a.m. to 5:00 p.m. and the other from 9:00 p.m. to 5:00 a.m. Light repairs of roadbed and equipment are made by regular Peninsula employees and heavy repairs by part-time employees. Since January 1, 1968, by agreement with Portland Livestock, Peninsula employees load and unload livestock.

Basic Labor agreements were entered into by Peninsula on April 14, 1943, with the Brotherhood of Railroad Trainmen and on June 15, 1941, (since modified) with the Brotherhood of Locomotive Firemen and Engineers. Peninsula engineers are paid \$29.05 or \$32.68 a day for service exclusive of repairs and maintenance with no holidays. They receive vacation and insurance benefits equivalent to employ-

ees of trunk-line carriers. Switchmen receive \$27.88 a day and the footboard yard master \$30.21 with seven annual holidays, extra pay for work on holidays, and vacation, insurance and welfare benefits similar to the engineers'.

United has agreed to manage Peninsula after the purchase in accordance with policies of its director, including supervisory, accounting, stenographic and other necessary managerial services as presently provided. United may terminate the agreement on 6 month's notice and the purchasers may terminate it on 30 day's notice.

During 1960, Peninsula handled 4,993 loaded or partially loaded cars compared to 2,748 cars in 1967. The latter represents about 39 percent of all cars interchanged at North Portland. The other 4,300 cars were interchanged between SP&S, NP, and GN, on the one hand, and, on the other, UP. From 1960 through 1967, there was a decrease in movements of livestock and packinghouse products and an increase in wood products. For example, in 1967, 34 percent of the cars handled transported wood products, 33 percent chemicals, 8 percent livestock, 7 percent packinghouse products, 13 percent paper products, and 5 percent other. In 1960, 16 percent of the cars handled wood products, 8 percent chemicals, 48 percent livestock, 15 percent packinghouse products, 6 percent paper products, and 7 percent other.

The statement of assets and liabilities of Peninsula as of February 1967, reveals total assets \$239,716, including current assets, \$35,038 (cash on hand, \$17,365, accounts receivable, \$7,888, materials and supplies, \$8,669, and prepayments of insurance and other, \$1,116), properties—transportation road and equipment, less depreciation, \$196,938, and miscellaneous physical property, \$7,740. Its expense

and retained income statement for each of the calendar years, 1962 through 1966, and for February 1967, reveals, among other things, total railway operating expenses for February 1967, \$14,774, and for 1966, \$81,244, total income before fixed charges for February 1967, a minus (\$725) and for 1966, \$13,320 less miscellaneous rents paid, \$1. Rent for leased road equipment for 1966 was \$3,200 and for January 1967, \$533. The balance of retained income for February 1967, was \$7,504 and for 1966, \$8,762. At the beginning of 1962, its retained income was \$151,208, which by the end of February 1967, was reduced to \$7,504, after adding annual income (less losses), and subtracting dividends of \$167,556 paid during 1966.

Rivergate Industrial District (Rivergate) consists of about 2,942 acres of public owned peninsula land at the junction of the Columbia and Willamette Rivers generally north of and adjacent to Portland's corporate limits. This land is under the jurisdiction of, and is being developed by, The Port for industrial use. It has about 6 miles of water front on 40-foot navigation channels of the Willamette and Columbia Rivers. Presently there are five industrial activities within Rivergate together occupying 265 acres, or less than one-tenth of the ultimate available area. These are Ashgrove Lime and Portland Cement Company, Conmetco Division of Consolidated Freightways, Collier Carbon and Chemical Company, and Oregon Steel Mills on the western side and the Zellerbach Pole Yard on the eastern end. Much of it is marsh land to be filled by dredging operations. An 18-month planned study of a 14 square-mile peninsula area including Rivergate by The Port's consultants, Daniel, Mann, Johnson, and Mendenhall of Los Angeles, Calif., known as the D.M.-J.M. report was dated September 14, 1967. Recommendations therein include a Rivergate railway system connecting with rail trunk lines. Two alternate

Rivergate rail access routes include (1) that over the existing tracks of The Port which connect with those jointly owned by SP&S and UP entering the southwestern area of Rivergate, and (2) the possible construction on the eastern side of Rivergate of an SP&S main line extension or an extension of Peninsula's tracks into the area.

SP&S, a class I railroad, and a wholly owned subsidiary of NP and GN, operates over lines generally extending from Spokane through Pasco along the north side of the Columbia River to Vancouver, Wash., thence across the Columbia River through North Portland, thence across the east-west line of UP on the peninsula, and thence across the Willamette River, through Doane Lake Yard and Willbridge, Oreg., to Guild Lake Yard. The latter connects with Portland Terminal Company tracks in downtown Portland. A connecting track at the intersection of SP&S and UP lines on the peninsula affords access to Barnes yard. SP&S has trackage rights at Barnes Yard and at Terminal No. 4. UP and SP&S jointly own tracks extending from Barnes Yard to the southwestern side of Rivergate which connect there with those of the Port of Portland. The SP&S Vancouver-Willbridge track, constructed in about 1908 with an industrial spur at North Portland, is jointly owned by SP&S and NP. In 1909 OWR&N (UP) constructed a track connecting Albina with the spur track, and a year later built a bypass track at the North Portland Junction. The bypass enables operation between Albina and North Portland interchange tracks without entering the SP&S-NP main line. SP&S and NP switch cars at North Portland on a 2-year alternating basis. Additionally, SP&S owns Oregon Trunk Railroad extending from Wishram, Wash., a point on the SP&S line, to Bend, Oregon, and also owns Oregon Electric Railway Co., extending south from Portland to Eugene,

Oregon. SP&S directly serves industries on its lines and those on lines used jointly by it located on the southwest side of the Willamette River at Portland including industries and docks also served by Portland Terminal Company. It serves industries at East Portland by use of the UP-SP steel bridge across the Willamette River near the Portland Terminal Company's Depot and yard. SP&S switches cars to and from points in the East St. Johns and the Terminal No. 4 areas north of the Willamette River and south of Rivergate. SP&S delivers cars daily to the North Portland interchange tracks at 2:30 a.m. and 11:00 a.m. and picks up cars there at 9:30 a.m. and 6:00 p.m. UP also picks up and delivers cars there daily at 6:30 a.m. and 2:30 p.m. The switching distance from North Portland interchange tracks to connection with SP at Albina yard or Portland Terminal Company Hoyt Street yard is about 6 miles and cars switched from and to those points should require about one hour. North Portland line haul traffic of NP and GN is usually moved twice daily to and from Vancouver. SP&S switches all Vancouver cars including those of UP. SP&S assesses a tariff switching charge for movement of cars to and from Peninsula interchange. It is possible for GN, NP, and Burlington under joint arrangements to handle Milwaukee traffic to and from North Portland interchange tracks. SP&S as owner of Peninsula could obtain Peninsula trackage rights which are essential to any agreement for switching operations. Presently Milwaukee could interchange cars with SP&S at Vancouver for movement to the peninsula by payment of a division of the through rate. In the absence of Milwaukee trackage rights there the receiving carrier could designate car delivery points of Milwaukee cars. With interchange trackage rights at North Portland it could enter into a car pulling agreement for movements from Vancouver.

SP&S indicates that the extension of Peninsula to serve the Rivergate is uncertain because of heavy curvature, impaired clearances, and low standard tracks of Peninsula, but alternation will become necessary with growth of the district; that a new direct access track from the SP&S main line at North Portland may be feasible; and that if such a track is constructed SP&S and UP have assured the Port of Portland they would provide service similar to that now available in the southwest part of the district. SP&S has made no decision respecting the planned additional access route to Rivergate. It expects to provide adequate switching service into the area as required.

SP&S opposes any ownership of, or trackage rights to serve, Peninsula by SP and Milwaukee, and indicates such rights and ownership would result in unnecessary duplicating tracks and service contrary to the public interest. It represents that existing routes, rates, and traffic will not be affected by the SP&S-UP proposed purchase of Peninsula. Milwaukee and SP now serve Peninsula shippers through connecting carriers and use of joint rates and routes. UP and SP&S and its parent lines provided line-haul service for about 70 percent of Peninsula's traffic during 1966, and 82 percent in 1967. The interchanging of 3,640 cars handled during 1966, between Peninsula and UP and SP&S and parent lines was 54 percent for SP&S and parent lines and 46 percent for UP. Twenty percent of the cars were routed SP and 1 percent Milwaukee. In 1967, SP routed 17 percent and Milwaukee 1 percent of the line haul for 2,748 handled by Peninsula. Nevertheless, a representative of SP&S doubts that carriers with no direct Rivergate access rights would have as much incentive to do business there as a direct access carrier. Normally the switching

carrier has a solicitation advantage. If Milwaukee has no direct Rivergate access on competitive traffic it must absorb an SP&S switching charge (presently 6 cents a hundred-weight) and pay a Peninsula rate division of \$29.25 a car when the car revenue exceeds \$60, on its traffic which would move through East St. Johns. Usually, line-haul carriers absorb no switching charges on unit train service or cars containing low rated commodities, and the payment of such charges by shippers discourages business. SP&S indicates Milwaukee might participate in a greater share of Peninsula traffic if its operation is extended to Portland. The SP&S representative concedes that if Milwaukee owns no part of Peninsula and cannot use the North Portland interchange tracks, it cannot compete equally with SP&S for Peninsula traffic. However, SP&S is willing to accept the standard section 5(2) proceedings' conditions (See *Southern Pacific Company—Merger—Pacific Electric Railway Company*, 327 I.C.C. 38) in event of a grant to assure participation by SP and Milwaukee in traffic moving to and from Peninsula as follows:

Upon consummation of the acquisition, Peninsula shall maintain and keep open all routes and channels of trade via existing junctions and gateways unless and until otherwise authorized by the Commission.

The present neutrality of handling traffic inbound to Peninsula by UP and SP&S shall be continued so as to permit equal opportunity for service to and from all lines reaching Peninsula through their connections with UP and SP&S and its parent lines, without discrimination as to routing or movement of traffic and without discrimination in arrangement of schedules or otherwise.

The present traffic and operating relationships existing between Peninsula on the one hand and all lines reaching Peninsula through UP, SP&S or its parent lines on the other, shall be continued insofar as such matters are within the control of UP, SP&S or its present lines.

UP, SP&S and its parent lines shall accept, handle and deliver all cars inbound and outbound, loaded and empty, without discrimination, in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.

UP, SP&S or its parent lines shall not do anything to restrain or curtail the right of industries, now located on Peninsula, to route traffic over any and all existing routes and gateways.

Any party or person having an interest in the subject matter may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction of the Commission may be retained to reopen this proceeding on the Commission's own motion for the same purpose.

SP&S first became aware of United's desire to sell Peninsula in 1963, but serious purchase negotiations were not commenced until sometime in 1966. When UP learned of the negotiations it became a party to them. If the application of these carriers is granted they intend to continue the corporate entity of Peninsula and its present management with present employees under joint supervision by the purchasers. The same management would permit an orderly carrier transition. SP&S has no objection to the Commission's prescription of conditions for protection of employees

as set forth in *Chicago & N.W. Ry. Co. Merger*, 261 I.C.C. 672, as follows:

During the period of 4 years from the effective date of our order herein such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this section shall not be required to continue for a longer period, following the effective date or such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order.

The SP&S parent companies' ownership is in issue in *Great Northern Pac.—Merger—Great Northern, supra*. Pursuant to proposals therein, on October 26, 1966, Milwaukee entered into a written agreement with GN, NP, Chicago Burlington & Quincy Railway, SP&S, and the New Company (The Great Northern Pacific & Burlington Line, Inc.), which as pertinent provides:

Effective upon the consummation of the consolidation proposed in Finance Nos. 21478, et al., the Milwaukee shall receive all of the six (6) conditions as sought by it in the aforesaid proceedings, as follows:

Condition No. 2—Entry into Portland and Trackage Rights between Longview Junction and Portland.

Provisions of the agreement relating to implementation of Condition No. 2 require the New Company or SP&S, where possible, to grant Milwaukee trackage rights over present NP and SP&S tracks between Longview Junction and Portland, including the right to serve on an equal basis all pres-

ent and future industries at Portland and intermediate points and the use of New Company facilities at Portland necessary for the switching of traffic to other railroads and industries. There is no specific reference therein to North Portland, or use of the North Portland interchange tracks.

The SP&S financial statement as of February 28, 1967, shows total assets, \$139,634,532, including current assets, \$12,775,147, special funds, \$123,381, investments, \$30,586,097, properties less depreciation and amortization, \$95,735,982, and total other assets and deferred charges, \$413,925. Liabilities include current liabilities (exclusive of long-term debt due within 1 year), \$8,928,010, long-term debt due within 1 year, \$793,842, long-term debt due after 1 year, \$45,650,781, reserves, \$156,042, other liabilities and deferred credits, \$158,704, capital stock, \$40,000,000; capital surplus, \$9,300,000, and retained income, \$34,647,153.

UP, a class I railroad corporation, as pertinent, operates over trackage extending (1) from Seattle to Portland, (2) from Portland, through O. T. Junction, and Hinkle, Ore., Pocatello, Idaho, and Cheyenne, Wyo., to Omaha, Nebr., (3) from Cheyenne, through Denver, Colo., to Kansas City, Mo., (4) from Spokane, Wash., to Hinkle, (5) from O. T. Junction, Oreg., to Bend, Oreg., and (6) from Pocatello to Los Angeles, Calif. UP connects at Bend with GN which latter carrier's line extends through Chemult and Klamath Falls, Oreg., and Bieber, Calif., to connect there with Western Pacific extending through Sacramento to San Francisco, Calif. UP tracks enter Portland from the east forming a great loop extending from a wye near Troutdale, 14 miles east of the Willamette River at Portland. One track extends from Troutdale generally west parallel with the Columbia River through Kenton Yard, Peninsula Junction, across the SP&S-NP tracks which enter Portland from the north, thence

through Barnes Yard to the southwestern side of Rivergate and Terminal No. 4, and returns along the north side of the Willamette River through St. Johns Junction located in Swan Island Industrial Park, through Albina past the entrance of the Steel Bridge (which affords access to the Portland Terminal Company's yard and depot in downtown Portland) to East Portland (junction with SP), thence generally east through Sullivan Gulch to Troutdale. Track at the west end of the loop near Barnes Yard jointly owned by SP&S connects with Rivergate where UP has served Ash Grove Lime and Cement Company. An OWR&N (UP) track segment extends from North Portland interchange tracks, through St. Johns Junction, and Albina Yard to East Portland. This track, not a main track, was mentioned in connection with SP&S tracks. It crosses the western end of the UP loop as does the SP&S-NP tracks west thereof. This segment of track is of particular significance in these proceedings. SP traffic now moves or is expected to move over it. An issue respecting congestion of traffic on the track segment is raised by UP in its opposition to the SP proposals. The distance over the segment from North Portland interchange tracks to the north end of Albina Yard is 5.2 miles. From the connection of the North Portland interchange tracks with Peninsula over the OWR&N tracks to its intersection with the UP track at Peninsula Junction is about 2.04 miles. At this intersection connections permit switching in four directions. Operation over the turnouts there is limited to 15 miles per hour. Near this intersection UP also has a bypass track which will accommodate about 10 cars. The distance from Peninsula Junction over the segment south through a 1-mile tunnel to St. Johns Junction is about 2.16 miles and the distance beyond St. Johns Junction over the segment to the north end of Albina Yard is 1.02 miles. The track segment generally is level with the exception of the 5/10 of 1 percent grade increase from Albina Yard to the

center of the tunnel. There is only one significant highway grade crossing on the segment at Columbia Boulevard which has a flashing light signal. There are also two or three private grade crossings near Peninsula Junction. Between Albina Yard and North Portland there is a 131-pound single-line track laid on rock ballast having no curves which create operating problems. Operation over the segment of track between Peninsula Junction and Albina Yard is presently controlled by a central traffic control system from Albina Yard. Albina Yard is a large and important classification and transfer yard of UP including about 44 tracks which will accommodate from 15 to 20 cars each extending about $\frac{3}{4}$ of a mile in length. The Willamette River lies along the western side of the yard and a super highway and a bluff lie along its eastern side limiting expansion. However, a map in evidence reveals that the yard at its center is about 500 yards wide and near its south end 666 yards wide. Most UP traffic to or from the Portland area moves through this yard. There is a 400 by 150-foot freight house at the south end of the yard. This is used in part as a salvage depot by UP and in part by shipper lessees. All of the tracks are used for switching purposes by UP. It endeavors to keep open one or two of the center tracks in the yard to accommodate through traffic. None of the tracks are permanently designated as running tracks although a substantial amount of through traffic moves through the yard. UP operations at Albina Yard are represented as taxed to capacity, with no room for expansion there. Switch engines operate out of there to serve Kenton Yard, North Portland Barnes Yard, East Portland, Sullivan Gulch, and Portland Terminal Company. They move, in addition to freight, passenger trains to and from Portland Station. Two such trains operate each way daily through Sullivan Gulch. Other passenger

trains moved by engines from Albina operate out of Portland station over the SP&S main line through North Portland and not through Albina Yard. Five UP freight trains operate each way daily over the track segment between Albina Yard and North Portland Junction. Delays at North Portland Junction interlocker are not uncommon with some delays as long as 80 minutes. SP uses the track between Brooklyn Yard and Albina Yard for freight moving to and from North Portland. The speed of traffic through the interlocker at East Portland is limited to 8 miles an hour. SP proposes to handle cars from Brooklyn to North Portland. UP represents that if the SP applications are granted congestion would occur principally on the single-track segment between St. Johns Junction and Peninsula Junction; that three fourths of the UP trains arriving at Albina Yard via Kenton are delayed from 15 to 180 minutes because of Albina Yard congestion. Also, there is a 1.2 percent grade on the UP track 1 mile east of East Portland which tends to retard car movements. Usually engines stationed at Kenton Yard are used for switching between Albina Yard and North Portland. There has been a consolidation of the Kenton Yard and Terminal No. 4 engines to eliminate congestion of traffic. There were about 40 to 56 switching moves daily in the Peninsula Junction area during 1967. For example, an average of 40 cars a day moved between October 1 through October 14, 1967, and an average of 37 cars a day moved between January 14 through 27, 1967. From January 26 through January 27 and from October 1 through October 14, 1967, traffic clearances in excess of 30 minutes between Albina Yard and North Portland interchange occurred from about 4 to 11 times or an average of 7.5 times daily. There are four transfer SP trains handled daily at Albina Yard. About six UP trains move each way in addition to trains of

NP, GN, and SP&S over tracks north of North Portland or a total of about 55 trains daily use those tracks. About 30 minutes time should be required to operate a switch engine with a few cars over the cleared track segment between North Portland and Albina Yard. However, an average of about 30 hours has been required for the movement of SP cars and also those of UP between Albina Yard and North Portland. UP does not consider a 30-hour transit time adequate service and has endeavored to reduce the running time by the described consolidation of its Kenton-Terminal No. 4 terminal service, by the establishment of the above described central traffic control, by breaking trains at Seattle, Dow, Hinkle, and Pocatello to avoid switching at Albina Yard, and by increased operation through Sullivan Gulch.

There is a double track extending from the south end of Albina Yard to East Portland and the junction of the SP there. Even though traffic congestion exists at Albina Yard, UP nevertheless represents that it can provide Rivergate any service through Peninsula needed and represents that its present service in the involved area meets shippers' demands for service. The Steel Bridge crossing the Willamette River at East Portland is jointly owned by SP and UP. The bridge, as noted, allows UP and SP to connect with the tracks of the Portland Terminal Company, the Portland Yard, the SP&S Hoyt Street Yard, and the SP&S and NP-Guild's Lake Yard, which permits SP to interchange traffic at the latter yard with SP&S or NP. Portland Terminal Company is a terminal switching company owned 40 percent by UP, 40 percent by NP, and 20 percent by SP.

UP, as noted, physically connects with Peninsula at North Portland, and interchange junction point and station on GN, NP, SP&S, and UP, within the Portland switching district. The physical interchange of line-haul traffic moving

by UP or its connections is performed by UP. On traffic moving to and from SP via SP&S, NP, GN, and UP from and to industries located on Peninsula, SP absorbs the Peninsula's rate division, and on traffic in which Milwaukee participates through joint routings, no switching charges are passed on to the shipper or consignee. UP expects to continue its policy of permitting line-haul carriers having no physical interchange with Peninsula to reach, through existing joint rates and routes, industries on the latter's line.

UP's position in supporting its application and in opposing the petitions for inclusion and applications for rights is that a grant of the UP-SP&S application would permit continuation of the Peninsula operation as a separate switching company by trunk line owners at North Portland interchange tracks and the joint operation of the freight station and yard there for their own traffic and an extension of the responsibility of these carriers for continuation of switching services at North Portland for other carriers. UP represents that management of Peninsula would become difficult and indecisive with four owners and that limited ownership would assure keeping the size of the yard facilities and costs of its operation at North Portland at a minimum. UP opposes the SP operation through Albina Yard principally because of congestion which it might create and believes the operation would result in uneconomical and wasteful conditions there. It represents that the operation of SP trains through Albina Yard is not practical because of the large number of trains already moving through the yard.

At the request of The Port and the Commissioner of Public Docks, a railroad conference was held at Portland on June 20, 1967, to consider elimination of non-competitive

switching charges to or from industries located on The Port's property at Swan Island (Albina) and Rivergate to encourage industrial development there. Thereafter, railroads participating in the conference agreed to establish a single basis of switching charges at all common points within Northern Idaho, Washington, and Oregon, with switching charges to be absorbed by the line-haul carriers where the line-haul minimum revenue is \$100 a car after absorption; and no absorption of switching charges when specific tariff rate items are excluded. UP represents that when the agreement is implemented all industries within the Portland Switching District including The Port's Property area served by Peninsula, and points in North Pacific Coast Territory will be on a competitive relationship except for the two conditions noted. UP opposes the petitions of Milwaukee and SP and the SP applications because it represents that all industries located on Peninsula can be served adequately either directly or through applicable effective joint rates and through routes, under the UP-SP&S proposal. It desires to protect its existing traffic and facilities investment. However, a representative of UP indicates that the cost to Milwaukee for handling traffic moving to or from Peninsula with no access right there would be greater than that of UP. It is possible under the conference switching agreement that by payment of the UP or SP&S switching charge the minimum car revenue would be less than \$100 resulting in payment of the switching charges by the shipper and refusal of the shipper to use Milwaukee's service. Also, on a shipment moving from a Peninsula industry to Arizona, routed UP from Peninsula interchange tracks to East Portland, thence SP beyond, SP would absorb the switching charge from Peninsula interchange to East Portland. The principal interest to UP in such a move would be the switch-

ing charge. UP generally has been unwilling to negotiate joint rates with Milwaukee between competitive points such as Spokane, Seattle, and Tacoma. Line-haul rates of carriers (but not all carriers) are applicable on traffic moving to or from Peninsula industries, and when line-haul rates are not applicable, the shipper or consignee must pay an extra switching charge.

The UP financial statement as of December 31, 1966, reveals total assets of \$1,902,430,048, including current assets, \$279,303,599, special funds, \$819,004, investments, \$479,073,070, properties less recorded depreciation and amortization, \$1,136,364,928, and other assets and deferred charges, \$6,869,447. Liabilities and shareholder equity include current liabilities, \$117,797,009, long term debt due within one year, \$17,757,016, long term debt due after one year, \$199,999,694, reserves, \$34,423,776, other liabilities and deferred credits, \$28,293,827, capital stock, \$299,292,350, capital surplus, \$9,374,305, and total retained income, \$1,195,492,071. The UP income statement for years 1962 through 1966 reveals among other things, total fixed charges of \$9,104,258 in 1962 and \$13,035,761 in 1966, and net income after fixed charges and other deductions transferred to retained income, inappropriate, for 1962, \$80,550,226, and for 1966, \$106,268,617. The total UP retained income, inappropriate, at the end of 1966 was \$1,160,899,972.

SP, a class I railroad, operates over trackage generally extending (1) from Portland south through Eugene and Klamath Falls, Oreg., Sacramento, San Francisco, and Los Angeles, Calif., Phoenix and Tucson, Ariz., El Paso and Houston, Tex., to New Orleans, La., (2) from San Francisco through Sacramento, Calif., Reno, Fernley, Weso, and Alazon, Nev., to Ogden, Utah, and (3) from Fernley to Klamath Falls. Service over these tracks is rendered by SP at many

points south and east of Portland in Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana. At Portland, the northern terminus of SP tracks, as noted, connects with those of UP at an interlocking plant about 375 feet south of the eastern end of the UP-SP Steel Bridge across the Willamette River at Portland. SP maintains a large switching yard at Brooklyn known as the Brooklyn Yard about 2.6 miles south of the interlocker. Trains moving into Portland from the south over SP lines are generally sorted and blocked at Eugene, Oregon, about 125 miles south of Portland and move to Brooklyn Yard for further blocking if required before they are received by UP at East Portland. SP traffic to or from Peninsula moves principally over UP tracks from East Portland through Albina Yard, St. Johns Junction to the North Portland interchange tracks. In some instances SP traffic also moves from East Portland across the Steel Bridge to the Portland Terminal Company yard thence to Hoyt Street Yard for interchange with SP&S and movement over the SP&S main line tracks to North Portland interchange. The distance from Brooklyn over the UP tracks to Peninsula is about 8.59 miles. An SP engine and crew is used to move cars from Brooklyn through East Portland thence over the UP tracks to Albina Yard where they are received by UP for movement to Peninsula. The switch engine and crew of SP performs service from North Portland to Albina Yard as UP's agent. Similarly an SP switch engine and crew moves cars from Brooklyn over the alternate SP&S route to North Portland by operating as far as the Portland Terminal Company's yard where they are received by Portland Terminal Company, as an agent for the latter company. SP represents that if it is granted bridge trackage from the interlocker at East Portland to

Peninsula at North Portland interchange tracks its engines and crews can operate from Brooklyn to North Portland. About 2 hours switching time would be required for a SP engine and crew to operate between Brooklyn and Albina Yard and an additional 1.5 hours between North Portland and Albina Yard or a total of about 3 hours and 30 minutes. There are delays in the movement of traffic over the UP tracks between those points. A 10 percent random sample consisting of 42 cars (from a total of 410 cars) of SP traffic switched to and from Peninsula during 1967 in evidence reveals among other things an average of 32 hours and 10 minutes required for car movements from the SP interchange points to Peninsula when switched by UP or SP&S and an average of 55 hours and 16 minutes when moved from Peninsula to the SP interchange point. SP represents that 30 hours or more required for the movement of cars between Albina and North Portland interchange is excessive and that SP with bridge rights can provide faster service. From 25 to 57 trains, or an average of 40, move over the UP tracks between Albina Yard and North Portland each 24 hours. SP anticipates no operating difficulties or labor complication in connection with its proposed operation over the described UP North Portland-Brooklyn Yard tracks. During 1967 about 490 cars were moved between Brooklyn Yard and North Portland interchange tracks over the described routes. It further represents that the proposed operation of unit trains of iron ore over the described UP tracks to and from Peninsula is feasible.

SP proposes to provide service which will meet the shippers' transportation needs including a scheduled operation to and from Peninsula and to establish Portland rates which include service to and from Rivergate. Presently, local moves between Peninsula and many non-competitive Oregon

points require the payment of switching charges in addition to the rate to or from Portland. For example, four carloads of lumber moved during January, February, and April, 1967, by SP from Dallas, Springfield, Millersburg, and North Bend, Orég., to Shefton Plywood Company, North Portland, for which separate switching charges were paid by the shipper. Such charges usually amount to \$32.29 a car. SP absorbs switching charges in the Portland area if the circumstances justify, but does not absorb such charges on shipments from Oregon origins to Peninsula on low-rated non-competitive traffic. SP represents that Rivergate is unique in that it includes several thousand acres of publicly owned industrial land adjacent to a metropolitan area suitable for use by industries; that the successful development of that property depends upon the flexibility of rail service and that such service for the development involves major markets in California and other states served by SP.

The SP financial statement as of December 31, 1967, shows total assets \$2,449,441,331, including total current assets, \$223,519,955, total special funds, \$1,490,344; net investments, \$182,223,376, total properties less recorded depreciation and amortization, \$2,028,866,435, and other assets and deferred charges, \$13,341,221. Liabilities include current liabilities, \$186,038,487, long-term debt due within 1 year, \$45,704,211, long-term debt, \$730,579,135, reserves, \$10,234,715, other liabilities and deferred credits, \$19,328,532, and total shareholders equity, \$1,457,556,251. The SP retained income account as of December 31, 1967, reveals a credit balance of \$1,032,681,210. The SP income account for the years ending December 31, 1966, and December 31, 1967, reveals among other things that for 1967 net railway operating income, \$52,521,146, total other income, \$39,927,418, miscellaneous deductions from income, \$86,324,468, fixed charges, \$31,607,107, and ordinary income, \$54,717,361.

Milwaukee, a class I railroad, operates over main lines from Seymour, Ind.; through Chicago, Ill., Minneapolis, Minn., Seattle and Tacoma, Wash., to Longview, Wash., a point on the Columbia River about 46 miles from Portland. Its main lines also extend from Chicago to Council Bluffs, Iowa, and to Kansas City, Mo. It serves the grain producing areas in Montana and eastern Washington and provides a connecting carrier service from those points to Portland. It also serves much of the forest products producing area in Idaho and Washington and industries in Tacoma, Seattle, Everett, and Bellingham, Wash., north of Portland. Also, service is rendered at the industrial cities, among others, of Chicago, Milwaukee, St. Paul, Minneapolis, Omaha, Kansas City, Davenport, Rock Island, Moline and Bettendorf. At the time of hearing it performed no physical operations to and from the Portland area and was awaiting final disposition and consummation in *Great Northern Pac.—Merger—Great Northern*, *supra*. In that proceeding, the merger of GN, NP, Pacific Coast R. R. Company, and the Chicago, Burlington and Quincy Railroad Company into Great Northern Pacific & Burlington Lines, Inc., was authorized by the Commission in its report of November 30, 1967, subject to conditions set forth in Appendix "L" thereof, which among things, permits upon consummation of the transaction entry by Milwaukee into Portland and trackage rights between Longview Junction and Portland described above in connection with the evidence presented by SP&S. If the Milwaukee petition herein for inclusion is authorized it expects to operate fast trains between Chicago, Seattle, and Portland and between Portland and Sumas, Wash., with connection at the latter point with British Columbia railroads. However, such service cannot be established if terminal delays occur at Portland which offset the proposed

service advantages. Its proposed service at Portland includes physical operation of its equipment to and from the Peninsula interchange tracks at North Portland. All the industries on Peninsula would be served as on-line industries with no absorption of switching charges. Despite postponement of the effective date of consummation in the Northern Lines merger case pending consideration of various petitions, Milwaukee expects the merger will be confirmed and consummated within a reasonable time, and contingent upon its extension of operations to Portland, requests joint and equal ownership of Peninsula stock with other trunk lines and proposes to assume its share of the portion of the stock and indebtedness as set forth in the application. Its joint ownership is considered essential to its Portland operation to industries located on Peninsula and at Rivergate. Peninsula is the only terminal facility at Portland not owned by trunk lines presently serving that point.

Milwaukee has a centralized, computerized expedited service for tracing, reconsignment, and diversion of cars, and for the elimination of car delays. It owns 39,000 freight cars and in 1967 it transported 61,140 trailers in its trailer-on-flat-car service. It maintains facilities at various points for the loading and unloading of this type of traffic. Since 1963 it has maintained a 55.5 hour schedule service from Chicago to Seattle and 67.25 hour return. Milwaukee represents that if its request for joint ownership and direct access to Peninsula is denied and the northern lines merger consummated, Milwaukee traffic to North Portland would move to Guild's Lake Yard located about 6 miles south of North Portland, by Milwaukee and thence switched by other carriers from that point back to North Portland requiring an extra day in transit. It further represents that such de-

nial would place it at great disadvantage in competing in the Portland area because exclusive control by UP and SP&S of Peninsula would enable those carriers to fix the switching charges of Peninsula to be absorbed by Milwaukee or paid for by shippers; that those carriers could obtain trackage rights over the Peninsula lines because of their joint ownership; and could direct the service and switching to and from points on Peninsula tailored to meet operating conditions of the owner lines with lesser considerations for operations of Milwaukee. If Milwaukee's requests are granted, it expects to absorb the switching charges in the Portland area to the same extent that other carriers absorb them. It represents that the granting of its petition would take nothing of real importance from UP and SP&S because the real potential traffic lies in Rivergate's future development and that the purpose of its petition was to obtain assurance that it will not be foreclosed from serving Peninsula and Rivergate shippers.

Milwaukee is not owned or controlled by any other railroad and does not own or control any other parties to the instant proceedings directly or indirectly. Its officials and directors have no common interest in such parties to this proceeding. Milwaukee does own an interest in a number of other transportation companies not particularly pertinent to these proceedings.

As of December 31, 1967, the Milwaukee financial statement reveals total assets of \$733,708,671 including current assets, \$76,187,097, and special funds, \$1,676,358, investments, \$26,067,221, total property less depreciation and amortization, \$625,512,008; other assets and deferred charges, \$4,265,987. Liabilities include current liabilities, \$54,060,146, long-term debt due within 1 year, \$15,925,685, long term debt due after 1 year, \$284,381,173, reserves, \$1,448,596,

other liabilities and deferred credits, \$4,085,187, and shareholder equity, \$373,807,884. Its income account for the years ending December 31, 1963, to and including December 31, 1967, reveals, among other things, 1967 net railroad operating revenue, \$11,439,385, other income, \$17,177,970, fixed charges, \$8,403,546, other deductions, \$5,669,621, ordinary income, \$2,733,925, prior period items, \$10,222,000, and net income transferred to retained income unappropriated, \$12,955,925. Its retained income statement for the years December 31, 1963 to 1967, inclusive, reveals a credit balance as of December 31, 1967 of \$104,249,684.

COST STUDIES OF SP AND UP

SP presented cost study evidence to show (1) the estimated variable cost to SP for UP and SP&S to handle traffic between SP and Peninsula, (2) the estimated variable cost to SP for handling traffic to and from Peninsula, and (3) the estimated annual net effect on SP resulting from handling traffic directly to and from Peninsula instead of bridging via UP and SP&S. The study covers a proposed operation, and certain trackage assumptions, operating estimates of informed personnel, all known factors, and a 10 percent (42 cars) random sampling of 418 cars handled during 1967 by SP moved to and from Peninsula were relied upon for its preparation. The study shows a weighted average car cost (35 UP cars and 7 SP&S cars) of \$44.27 to SP when UP and SP&S handled the traffic. Effective tariff charges of the involved carriers were used in this portion of the study. The second part of the study shows the estimated variable cost to SP when handling its own traffic between East Port-

land and Peninsula for 1 carload per round trip as \$166.64, 5 carloads \$12.93, 10 carloads \$20.94, 15 carloads \$15.53, and 20 carloads \$12.93. The total of trackage, switching, and car rental costs were used in computing this portion of the study. The trackage costs are calculated upon a percentage of use by SP basis (0.58% for 1 carload round trip and varied increased percentages for greater numbers of cars), including 5 percent interest on reproduction costs, less depreciation (\$5,360,000), estimated taxes (\$22,000), and maintenance (\$36,300). The use basis of computation was employed by assumption that the involved traffic would be a small percent of the total moved over that line and that a trackage arrangement similar to that used by SP in a Beaumont, Tex., arrangement would be applicable. An estimated round trip time of 205 minutes expanded 33 percent for non-productive time and expanded and contracted for varying numbers of loads at \$0.6755 average engine cost per minute was used in calculating the switching costs in this part of the study. The third part of the study, based upon the other two parts, reveals that for one carload round trip, if handled directly by SP, would result in an estimated annual net loss to SP of \$44,600 and savings of \$13,100 for 5 carloads, \$85,200 for 10 carloads, \$157,400 for 15 carloads, and \$228,800 for 20 carloads, with a breaking point of 4.09 carloads a round trip.

UP presented similar cost study evidence which differed in three material respects, (1) the use of trackage cost based upon a numerical basis (described by UP as "user basis");

3. In *Missouri-K.-T. R. Co. v. Kansas City Terminal Co.*, 198 I.C.C. 4 at page 9, the Commission, Division 3, in its report states in part: Both petitioner and respondent conceded that just and reasonable compensation must include a reasonable return

that is, adjusted in relation to the number of users regardless of individual use, (2) use of the actual tax value (\$122,000) on the involved property and maintenance, both computed on a "use" basis, and (3) use of a projection of the Portland Switching Study costs expected to be implemented during 1968. With these modifications, the UP study reveals (1) restated estimate of variable costs to SP by UP and SP&S handling of traffic between SP and Peninsula of \$15.87 a carload weighted average (35 UP cars and 7 SP&S cars), (2) a restatement of estimated variable costs to SP for handling its own traffic from and to Peninsula for 1 carload round trip as \$531.08, 5 carloads \$109.55, 10 carloads \$56.89, 15 carloads \$39.30 and 20 carloads \$30.63, and (3) a restated estimated annual net effect on SP resulting from its direct handling of traffic to and from Peninsula instead of using UP or SP&S connections, reflecting losses of \$188,051 for 1 carload round trip, \$170,965 for 5 carloads, \$149,720 for 10 carloads, \$128,280 for 15 carloads, and \$107,740 for 20 carloads. Generally the studies of SP and UP differ substantially in their estimated annual net effects. In their preparation there was certain reliance upon estimates, at least one variation in the random sampling used, imperishables such as estimates and judgment factors used in calculations, and use of a 418 car frame (an unusually small number for most satisfactory results) from which a ten percent sampling was taken:

upon the fair value of those zones of the terminal which petitioner has acquired the right to use. Two methods of computing that return are urged upon us. Petitioner urges the user basis, by which is meant that the petitioner should pay upon basis of the relation which its use of the terminal bears to the use of all the using carriers. This has been averaging somewhere in the neighborhood of 5 percent. Respondent urges the numerical basis, that is, adjustment in relation to the number of users of the terminal regardless of the extent of the individual use by those lines. As there are 11 users, petitioner's proportion under this basis would be one twelfth.

SHIPPERS' EVIDENCE

Zellerbach, the second largest producer of paper and paper articles in the United States and also a producer of industrial chemicals, has its principal manufacturing and shipping facilities located in the Portland area. It also has paper mills at Camas, Wash., and Wauna and West Lind, Oreg. It ships in excess of 1,100 carloads of the described commodities each month from the Portland area to various points throughout the United States. *Zellerbach* has or expects to establish four facilities in the Portland area. One is a distribution complex, Water Way Terminal Company, served by the Portland Terminal Company and Western Transportation. The latter is a certified water carrier owned by *Zellerbach* which has connections with a number of other carriers. At the time of hearing, Water Way Terminal Company facilities were being expanded and *Zellerbach* was negotiating for the purchase of a 1,500 water-front property located adjacent to Ashgrove Lime Company at the western end of Rivergate. The second is a pole yard located on 40 acres of land owned by *Zellerbach* at the eastern end of Rivergate. The pole yard, as noted, is served by Peninsula. The third facility is the planned construction of a 200,000 square-foot warehouse to be located on 44 acres of land purchased from Swift & Co. At the time of hearing the land purchase was waiting escrow clearance. The land is about 500 yards east of the SP&S main line at North Portland. The warehouse is expected to be used for the storing and distribution of products of the adjacent *Zellerbach* Flexible Packaging Division plant, the fourth facility.

During the 12 months ending November 30, 1967, 365 freight cars moved to or from the Flexible Packaging Divi-

sion plant and 638 freight cars (177 shipments) to and from the pole yard. The shipper's poles now move in 65-foot drop-end gondola cars supplied by the rail carriers. Sixty-four percent of the 177-pole shipments involved delays due to Zellerbach's inability to obtain suitable cars when needed. The delays ranged from 1 to 26 days, or an average of 4.5 days each.

Zellerbach supports each of the applications and petitions because authorization of the proposals would increase the number of carriers having direct access to Peninsula and increase its ability to obtain suitable cars, and because it desires service at its Rivergate facilities comparable to other transportation at Portland. It represents that such access could result in the elimination of a 22 degree curve in the present Peninsula tracks so that 85-foot pole cars can be accommodated thereon. Zellerbach represents that if SP had direct access to its pole yard, it would request that carrier's service more often. The Zellerbach representative could recall no instances in which it paid separate switching charges for service to and from its facilities located on Peninsula. Zellerbach indicates that the greater the number of connecting carriers required for handling a shipment the greater the number of rate divisions and cost of service.

Oregon Steel Mills, a division of Gilmore Steel Corporation of San Francisco, within the past 2 years has acquired 152 acres of Rivergate land where it is presently erecting a new steel plate mill. Several phases of construction of the mill are contemplated. The first phase cost is \$35 million. Upon completion of the first phase mill, it will produce 200,000 tons of steel plate annually and upon completion of the entire mill the ultimate mill's capacity will be 700,000 tons. The mill site was located at Rivergate because it

affords room for the mill's expansion and for the location of related steel fabricating industries near it and because Rivergate is considered by this shipper as a transportation hub. There are presently steel plate mills located at Provo, Utah, and Fontana, Calif. The Rivergate mill will be the first producing steel plate mill located in the Pacific Northwest and its location will result in the establishment of a steel basing point at Portland, whereas up to this time the steel basing points have been at Provo and Fontana. Ore for use at the mill presently will be provided by Marconi Company transported by water carrier from Peru to Rivergate. However, Gilmore Steel Corporation owns large iron ore deposits near Mount Shasta, Calif., near a line of the SP. Arrangements are in progress for procuring iron ore at the Shasta location. Oregon Steel Mills expects to ship unit trains of ore from Shasta to the Rivergate mill and has obtained assistance and information respecting proposed transportation costs from SP, which in turn procured proposed costs of switching at Portland from UP. SP, prior to the filing of its applications, proposed to transport the shipper's ore from Shasta to the UP Portland interchange in SP equipment, including all terminal service charges at Shasta at \$3.85 a gross ton subject to a tariff docketing proposal, and information received from SP respecting the proposed UP switching costs which was confirmed through the UP rate department was \$.23 a gross ton from the UP-SP interchange at Portland to Rivergate. Oregon Steel Mills prefers a single train crew and through round trip unit train service. UP indicates it cannot provide this type of service at Portland because union contracts require the use of local power equipment and the payment of the Portland crew for a minimum work time. The shipper represents that it would start mining ore at Shasta as soon

as economically feasible, that its ore can move economically only in unit trains in the service of a single carrier with no connections and that it supports the SP applications to enable direct access to its Rivergate plant by SP through North Portland. The shipper is aware that major fill and track construction would be necessary before operation from Shasta through North Portland becomes possible. It indicates that Rivergate is being developed by use of public tax money and it believes direct access to Rivergate should be afforded through all rail carriers.

Williamette Wood Products, Inc., manufacturers stock for the manufacture of baby cribs at North Portland. Raw materials are shipped from Omak, Wash., to its plant by rail under an in-transit rate, where they are processed and shipped beyond. The shipper has used SP trailer-on-flatcar service for movements of its commodities beyond Portland to Los Angeles, Calif. Each week about one carload of the shipper's commodities are moved to or from North Portland. The shipper has relied upon service of SP&S, NP, GN, and UP and has no need for additional rail services or for additional terminal switching service at its plant. It supports the application of UP-SP&S and would like to have the continued service by the same railroad personnel at North Portland.

Morrison Oil Company operates a storage and packaging plant at North Portland and has relied principally upon SP&S for the provision of rail service to and from its plant. Each year it receives about 55 car loads of oil at the plant. It also receives cans and tires and antifreeze which move to the plant by truck. The antifreeze is shipped by water to Portland and moves locally by truck from St. Johns to Portland. This shipper's packaged products are shipped principally by truck and railroad from North Portland to points in Washington and Montana. Railroad shipments move from North Portland to the Butte-Missoula and Billings, Montana, area. This shipper supports the SP&S-UP

application because it believes that the acquisition will result in the continuance of present service which has been satisfactory and would assist it in developing additional business. However, the shipper admits that UP would not be particularly interested in its development of business at points in such states as Arizona, New Mexico, Texas, and Louisiana served by SP. The shipper was not aware that a shipment of its cans on October 10, 1967, from Ravenwood, Calif., routed SP-SP&S required 45 hours for movement from the SP interchange at Portland to Peninsula or that a shipment of cans on October 23, 1967, from Ravenwood, Calif., routed SP-UP to Peninsula required 37 hours for movement from the Portland UP connection to Peninsula.

Collier Carbon & Chemical Corporation, a Union Oil Company subsidiary, is constructing a new \$2 million distribution facility north of the Ashrover Lime Company plant on the western side of Rivergate. The plant, to be in operation by the Fall of 1968, expects to use the direct service of SP, among other rail carriers, for the movement of its products from Rivergate. Urea, used in the manufacture of resins and fertilizer and as a cattle feed ingredient, is to be shipped by water carriers to the facility and to be reshipped by rail, truck, and water carriers to its customers. It is particularly interested in obtaining SP service for movements to western Oregon points and supports the SP applications because direct SP service would provide it suitable transportation to western Oregon points within provision of reasonable transit time, car availability, and rates. It has no preference as to the carrier switching its traffic to a belt-line or terminal company.

Serendip Industrial Materials of Portland, Oreg., supports the SP&S-UP application. It receives annually about 60 car loads of stone material at North Portland. The stone

is distributed to builders and metal refiners in the Portland area. Most of it is moved by GN from points in Washington and Canada although stone is also expected to be received from points east of Portland which would move by UP. This shipper has little interest in SP service, but if it receives stone from points south of Portland served by SP it would desire direct SP service to North Portland.

POSITIONS OF LABOR ORGANIZATIONS

Three of the eight labor organizations appearing in opposition to the applications and petitions presented evidence. The *Brotherhood of Railway Clerks of Portland Terminal Company* representing 300 employees of the latter company, particularly opposes the SP request for bridge trackage rights. The railway clerks maintain that the real purpose of SP is to enable its trains to bypass Portland Terminal Company and effect and interchange with SP&S, NP, or GN at North Portland instead of at the Portland Terminal Depot; that if bridge rights are granted, switching by Portland Terminal Company would decrease substantially; and that authorization of SP's request would result in increased traffic congestion on the involved UP track segment. This railway clerks organization has no objection to the proposal if limited to the interchange of Peninsula traffic at North Portland. It does not consider 30 hours transit time for the movement of cars from Albina Yard to North Portland reasonable.

The *Switchmen's Union of North America* is particularly interested in the welfare of 158 Peninsula Terminal Company employees. It opposes any grant of the applications or petitions permitting SP and Milwaukee to use interchange track facilities of Peninsula. It desires the continued handling of interchange traffic by Peninsula Terminal Com-

pany between SP and NP, GN, and SP&S and seeks employment security for its members. It maintains that services at Rivergate and North Portland are adequate. Starting in 1964 SP has on several occasions sought union assent to a change in the Portland interchange point for through trains from Portland Depot to a point north thereof.

The *Brotherhood of Locomotive Engineers of Union Pacific Railroad* opposes all of the applications and petitions and maintains that any grant thereof would affect engineer operations in the Kenton-Albina-East Portland-Barnes area. It maintains that the loss of even 1.5 car movements daily between East Portland and North Portland would reduce engine employees at Albina Yard. It desires maintenance of the status quo and represents that UP can provide all the involved services needed. However, objection by this organization to the SP&S-UP application to acquire Peninsula was withdrawn on brief, with a continuing objection to the SP and Milwaukee proposals. In the event of a grant of the latter carrier's proposals, it desires adoption by the Commission of employee protective conditions similar to those incorporated in an agreement entered into by the Brotherhood of Locomotive Engineers and Great Northern, Pacific and Burlington Lines, Inc., filed in Finance Dockets Nos. 21478 and 21480, as set forth in Appendix A to its brief filed June 17, 1968.

INTERVENERS' EVIDENCE

The Port's position is that Rivergate's development requires services of all the involved line-haul rail, barge, and ocean vessel carriers serving Portland with service at competitive rates, and that all the rail applicants should be afforded equal operating access to Rivergate. It expresses

a need for fast reliable freight service at Rivergate through Peninsula provided on equal terms by all present and future railroads serving Portland which can be accomplished by joint ownership. The Port desires the services of all the railroads to facilitate mechanized rapid handling of liquid and dry bulk commodities, containerized commodities, and other general freight between Rivergate and points throughout the United States. It asserts that single-car switching to and from small industries with so-called one-car sidings has become obsolete. Such switching is uneconomical because of engine and crew costs, and obsolete because trucks can more effectively perform a small shipment service.

The Western District Class I railroads traffic increased 36.2 percent in the 9 years following 1958. The Port's transportation consultant estimates that by 1990 traffic of those railroads will double, if adequate rail facilities are provided, and that Portland would share in its growth. Adequate facilities would include the most efficient mechanically fitted freight handling terminal with low freight handling costs possible through greater movement of intermodal traffic. After Rivergate's development, The Port estimates that from 500 to 600 cars or an average of 20,000 tons daily will move to and from the district; that daily service will require one unit train, one semi-unit train, one semi-unit trailer-on-flatcar (TOFC), train, two industry trains, and two switching runs, and that the types of service would include provision for (1) bulk commodity unit trains (never uncoupled), (2) semi-unit train service for handling the less mechanized traffic to move in blocks of 40 to 150 cars, (3) TOFC service, and (4) miscellaneous and switching service. Rivergate is represented as affording opportunity for use of new technology in rail terminal service by use of unit and

semi-unit trains, and the elimination of lost car movement time usually incurred at terminals. UP and SP&S, as noted, are the only carriers presently having direct access to Rivergate through the eastern and western entrances. The Port indicates that unless the four applicant railroads are afforded equal access to Peninsula its owners would create unsatisfactory non-single-line switching conditions for the other lines; that unit train bulk traffic is impeded equally as much by switching delays as by traffic interchanges; that if Milwaukee traffic is switched by SP&S or UP before reaching Peninsula, Milwaukee's single-line efficiency to and from points in such States as Indiana and Iowa will be impaired; that if SP traffic is similarly switched, its single-line advantage to and from such points as Medford, Reno, Stockton, San Francisco, Fresno, Phoenix, El Paso, New Orleans, and Memphis will be limited. The Port represents that existing uncorrelated transfer of freight cars within the Portland switching District will not meet Rivergate's rail service needs; that uncoordinated switching operations at Portland result in a minimum 24-hour transfer time, and sometimes 3 or 4 days for operations across the switching district compared to a few hours required for cross-city truck movements. Peninsula assertedly will be useful to Rivergate only if it can handle unit trains of 100 cars or more which Peninsula's track facilities presently will not accommodate.

Economic and statistical evidence relating to Rivergate presented by The Port's Research and Planning Department reveals, among other things, the following: The Columbia-Willamette system is the second largest river improvement project in the United States. The Federal Government and The Port together up to December 31, 1967, expended \$120 million in improving the system. Ultimate public and private investment at Rivergate is ex-

pected to exceed \$500 million. The Research and Planning Department is responsible for obtaining the described D.M.-J.M. commercial engineering Rivergate survey, report, and recommendations. The Port's long experience in marketing and research and its recognition of current technological transportation changes influenced its support of joint ownership of Peninsula by all the line-haul railroads serving Portland. The value of water-borne imports and exports in the Portland Custom District increased 313 percent from 1954 to 1966 compared to increases during that time of 201 percent at Los Angeles, 128 percent at San Francisco, and 132 percent at Washington ports. The Portland oceanborne traffic increased from 8,535,686 short tons in 1955 to 10,489,989 tons in 1965 or 22.9 percent.

The Portland Commission of Public Docks, City of Portland, favors joint ownership and operation of Peninsula and direct access to Rivergate by all line-haul railroads serving Portland. It is particularly interested in the transportation cost to shippers for movements to and from Rivergate, and asserts that non-competitive transportation costs there would preclude consideration by industries of Rivergate as an industrial site. The Commission represents that establishment of a \$100 per car line-haul revenue minimum as proposed in the Conference of Railroad Presidents June 20, 1967, agreement to establish a single basis switching charge at competing Pacific Northwest points would adversely affect Rivergate shippers' interest without equal ownership by all the line-haul railroads in Peninsula. Railroads with no such interest for economic reasons would be required to assess switching charges, while owner-carriers subject to their own tariff provisions could absorb switching costs on the basis of a lower applicable car minimum revenue. Numerous illustrations of instances in which this

might occur are in evidence. For example, a non-owner carrier subject to the P.C.F.B. Tariff No. 35, I.C.C. 1098, Item 685, naming a rate on cans, fibreboard, set up, of 40.5 cents a hundredweight, 14,000 pound minimum weight, from Portland to Banks, Oreg., representing a minimum car revenue of \$84.70 would be required to assess an additional charge while an owner carrier would absorb such a charge. Also, pointed out is the second exception to the proposed switching agreement which provides that switching charges will not be absorbed in instances where excluded by specific tariff provision.

The Public Utility Commissioner of Oregon favors joint ownership of Peninsula by all line-haul carriers serving Portland. Evidence presented by the Commissioner covers geographical and physical characteristics of the involved transportation area. It reveals, among other things, that in addition to the five major railroads, NP, GN, SP&S, UP, and SP presently serving the Portland area, 275 motor carriers operate to, from, or within Portland. Fifty-one of these carriers are regular-route general commodity carriers all authorized to serve Rivergate within the Portland commercial zone. Tables in evidence presented by the Commissioner show that the annual operating revenue of Peninsula has ranged from a high of \$161,292 in 1956 to a low of \$75,949 in 1963. Its average revenue per car for switching service increased from \$7.93 in 1950 to \$27.71 in 1966. Peninsula's net operating income has ranged from \$39,253 in 1955 to a deficit of \$4,153 in 1962. While it operated at a deficit in 1962 and 1963 its income has since considerably improved. The Commissioner represents that the future need of Peninsula is closely related to development of Rivergate and the granting to SP and Milwaukee of direct access to Peninsula would provide present and future industries

served by Peninsula direct service by all line-haul railroads serving Portland.

Through rates and charges of SP&S, GN, NP and UP are presently applicable to industries served by Peninsula. SP does not interchange traffic at Peninsula and depends upon SP&S or UP switching service between the SP interchange at Portland (Union Station) or East Portland and the North Portland interchange. SP presently absorbs the switching charges on traffic moved to or from Peninsula subject to a per car minimum charge of \$67 plus increases. Peninsula industries pay UP or SP&S for switching between North Portland and East Portland when the published through rates do not provide for absorption of the switching charges. For example, a switching charge is applicable to noncompetitive traffic originated by SP in Oregon moving to Peninsula.

DISCUSSION AND CONCLUSIONS

The issues here first require an understanding of the treatment to be afforded the involved Portland area, including land and transportation facilities of the public, of all types of carriers there, and of the shipping industries. Recognition of the public interest, the carriers' competitive efforts, and the present and future traffic pattern in the entire Portland area is required. They are directly related to the success or failure of trunk line operations there. Some indication exists that segmentized consideration would be appropriate. For example, considering the trackage between Albina Yard and North Portland as other than part of the UP Portland (Albina Yard) terminal facility. The factual reality evident points to an industrial transportation area which in the best public interest can be treated only as one transportation terminal entity. Ob-

viously, divisive determinations would result in multiple problems and prolonged litigation not conducive to the future welfare, growth, and development of the Portland area. Therefore, judgments here are necessarily based upon consideration of the involved area as a whole.

The lead applications and related petitions were filed pursuant to sections 5(2) or 3(5) of the Interstate Commerce Act. Under section 5(2)(b), approval of requests for control and ownership such as those involved here must be predicated upon conditions which would promote interstate transportation in the best public interest. In *N. Y. Central Securities Co. v. U. S.*, 287 U.S. 12, the Supreme Court stated, at page 25, that "the term 'public interest' has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provisions and best use of transportation facilities"

Section 5(2)(c) of the Act contains the essentials for the Commission's consideration before a proposal thereunder may be authorized. These are (1) the effect of the proposed transaction upon adequate transportation service to the public, (2) the effect upon the public interest of the inclusion, or failure to include other railroads in the territory involved in the proposed transaction, (3) the total fixed charges resulting from the proposed transportation, and (4) the interest of the carrier employees affected. Additionally, the public interest test is to be applied in light of the national transportation policy which includes the promotion of sound economic conditions and the development of a more efficient transportation system.

Section 5(2)(d) of the Act provides that:

The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involv-

ing a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon finding that such inclusion is consistent with the public interest.

Section 5(2)(f) of the Act provides that:

As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Section 5(11) of the Act specifically relieves the applicants in transactions approved under section 5(2)(a) from operation of the antitrust laws and of certain other restraints, limitation, and prohibitions of law. However, the Supreme Court in *Seaboard Air Line R. Co. v. U.S.*, 154, 156, indicates that section 5(11) does not authorize the Commission to ignore the antitrust laws, but must estimate the scope and appraise the effects of curtailed competition which will result from the proposed acquisition and consider the advantages of improved service and other matters in the public interest to determine whether the acquisition will assist in effectuating the overall transportation policy.

Section 3(5) of the Act provides in part:

If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including mainline track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced.

Also pertinent here is section 1(18) of the Act which provides in part:

After ninety days after this paragraph takes effect no carrier by railroad subject to this part shall undertake the extension of its line or railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this part over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present and future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit such abandonment.

The evidence justifies authorization of the proposed control in Finance Docket No. 24679 conditioned upon inclusion and equal ownership by SP and Milwaukee and the intervening trackage access to Peninsula by the latter two carriers, as set forth in the findings, and the conclusion that such control is in the public interest and would promote a sound transportation system. The Port, Public Utility Commissioner of Oregon, Portland Commission of Public Docks, and some industry representatives which presented evidence support joint equal ownership by all the line-haul railroads serving Portland. Existing disparity in charges and treatment of traffic within the Portland switching area is convincing evidence that the greatest economic advantage for equality of shippers and carriers can be accomplished

best by equal access and ownership. The most economical and functionally modern transportation facilities are essential to development of Rivergate and the Port of Portland. Limitation of direct access there to two railroads barring on-line solicitation and the direct development interests of the other railroads serving the Portland area is contrary to an environment of unencumbered development and the establishment of a sound transportation system. Each of the four railroads which request equal ownership in Peninsula are class I railroads with ample financial means for ownership participation and the sharing of cost for future betterments. Moreover, direct access to all the carriers will enable shippers to deal directly with originating carriers providing on-line service to many points in areas not served by the two initial applicants. Shippers would benefit from elimination of switching charges assessed on non-competitive traffic where one of the applicants now acts as a switching carrier.

No particular finding or further consideration here respecting fixed charges is required, except to say that evidence relating to the proposals reflects no increases in, or guarantee, or assumption of fixed charges which would require statutory action.

With respect to protection of employees' interests, authorization of the control proposals no doubt would result in some employee readjustments. However, the evident immediate effects of the proposals upon employees are minimal, and normal attrition would tend to dissipate them. At most, the immediate result would involve reassignment of switching crews for about 1.5 cars daily moving through Albina Yard, because responsibility for the move under the proposals would shift from UP to SP. One labor organization represents, in absence of documentary or statistical

support, that a change in the interchange point, of through traffic, from East Portland to North Portland would reduce operation of the Portland Terminal Company by as much as 50 percent. Actually, whether traffic moves through Albina Yard or through the Portland Terminal Company Yard in route to or from North Portland is by railroad management prerogative exercisable through carrier agreement irrespective of a determination here. Even though the effects are minimal, employees of the involved railroads, nevertheless, will be affected by authorization of the proposals, and action here is subject to, at least, the bare requirements of section 5(2). As noted, certain carrier-employee labor agreements of the involved railroads exist, but participants in these proceedings espouse no new agreements wherein conditions have been prescribed or agreed upon by the parties as permitted by the last sentence in section 5(2)(f). However, the Brotherhood of Locomotive Engineers, on brief, request the imposition of conditions similar to those contained in an agreement dated June 25, 1965, signed by it, and The Great Northern Pacific & Burlington Lines, Inc., used as a basis for prescribing protective conditions in the *Great Northern Pac.—Merger—Great Northern, supra*, proceedings. Aside from the prescription of bare minimum protective conditions in this proceeding as imposed in *Chicago & N. W. Ry. Co. Merger*, 261 I.C.C. 672 at 675, more detailed conditions are deemed unnecessary and are not recommended. Actually, the evidence affords assurance of increases in involved traffic movements, if ample transportation is provided, which would result in substantial overall public and employment benefits.

Evidence relating to the SP applications, Finance Docket Nos. 24890 and 24891, warrants a conclusion that common use by SP of the terminal facilities, including trackage, of

UP between Peninsula, at North Portland Interchange tracks, and the SP-UP connection at East Portland is in the public interest, practicable, and would not substantially impair UP's ability to handle its own business. The issue affording the greatest contest here is whether traffic conditions over and along UP trackage between East Portland and North Portland warrant the proposed SP operation. The record reflects substantial traffic movements over the UP trackage with congestion over the single track from St. John's Tunnel and in and around Peninsula Junction. Noted, is the almost incredible 30-hour average transit time required for car movements between Albina Yard and Peninsula, a round trip distance of about 10.4 miles, including engine changes, car inspection, and car classification at Albina Yard, which UP considers reasonable. Despite the congestion, there are times during each day when the single-line track through the tunnel to North Portland is clear and could accommodate additional traffic. UP asserts it is capable of providing the public all the service it needs presently, or will require, in the involved area. With no immediate appreciable increase in the involved traffic, the examiner is convinced that a grant to SP of the trackage rights would result in no significant increase in congestion on the involved UP track segment, and the user carriers through their joint efforts would be in a better position to overcome future traffic impediments as they occur. Actually, with SP cars being classified, and inspected at Brooklyn Yard or Eugene, before movement by SP under the proposal directly through Albina Yard to North Portland and return in about 3.5 hours, no more and possibly less congestion should occur than at present. While UP has endeavored to relieve congestion in the Albina Yard area through various devices, the 30-hour transit time

remains unsatisfactory, and greater efforts in the public interest must be found to expedite movements between those points. With the development of Rivergate and the requirements for substantial movements of traffic, including unit trains, to and from that area the examiner is convinced that access thereto by other line-haul carriers will create greater incentive for improvement of railroad facilities and for elimination of present unsatisfactory conditions in the involved area. Rather than perpetuate the existing unsatisfactory conditions, the advent of other carriers, the advent of other carriers would at least supply added carrier financial support and responsibility greatly favoring the public interest.

As noted, cost studies of both SP and UP introduced in evidence reflect great variance in the net effect of operations over the Albina-North Portland track segment involved here. The studies are significant only to the extent that they bear on the issue of public interest, and to the extent that they may affect compensation which might be paid UP for use of its involved trackage. The probative effect of the studies upon public interest is questionable because of variables in judgment and calculations used, or which might be used, in their preparation. Of interest, is the study basis of SP for determining compensation for use, that is, the relation which actual trackage use bears to total use by all users, compared to the basis used in the UP study, generally the payment in relation to the number of users irrespective of extent of use by any of the carriers. In this connection, the examiner observes that while the application in Finance Docket No. 24890, in part, contains a request for "bridge trackage rights" the application in Finance Docket No. 24891 specifies no particular type of trackage rights sought. In the best public interest any

authorization of proposed trackage rights should permit full user rights, with the attending assumption by the recipient thereof of entire use and responsibility and the payment of compensation therefor on a numerical basis. However, the amount of compensation for use of trackage rights recommended herein, is left to agreement by the involved carriers. Section 3(5) clearly reveals that after the right of a petitioner to use the terminal facilities of another carrier has been determined, the interested carriers shall have an opportunity to agree upon the terms and compensation for such use. In event of failure of the carriers to agree, they may petition the Commission to reopen the proceeding for further hearing for determination and prescription of terms and compensation. Jurisdiction will be retained for such purpose. See *Missouri - K. - T. - Ry. Co. v. Kansas City Terminal Co.*, *supra* and *Use of Erie of Niagara Junction Ry. Co. Terminals*, 269 I.C.C. 493, 499.

Authorization of joint ownership and access by the four line-haul railroads in Peninsula, and the proposed trackage rights to SP would not curtail competition. To the contrary, shippers in the involved area would be afforded free direct access to all the line-haul carriers' services. Among other things, it would place traffic movements between the Portland area, on the one hand, and, on the other, on-line points of carriers in California and States east thereof, on a more competitive basis with movements between those points over the lines of UP and [redacted] connections, through Wishram, Wash.; Bend and [redacted] Oreg., and Bieber and Sacramento, Calif. Also, Milwaukee would become more competitive with UP and GN and their connections in providing service to the north and east of Portland. The authorizations, generally, would result in improved competitive service and the fostering of sound transportation in the involved area.

UP asserts on brief that extension of service by SP and Milwaukee as requested cannot be approved under section 3(5) or section 5(2) because the service each seeks to perform requires a finding that the present and future public convenience and necessity require extensions of their operations into the involved territory pursuant to section 1(18) of the Act. SP is certificated to operate from points south of Portland to East Portland, within the Portland Switching District, from which it serves, and has served, Portland through connections for many years. The Commission has ample power under section 3(5) to require use by SP of the involved UP terminal facilities and use of Peninsula facilities. However, the Commission has authority under section 5(2) upon petition by a carrier as prerequisite to approval of a proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved. This section contains authority for the inclusion of SP upon equal terms in the Peninsula purchase, for SP is a railroad "in the territory" providing service in the Portland area. Further certification of SP under section 1(18), aside from possible authorization of user rights under section 3(5), to operate to and from Peninsula, in the circumstances, is not required. The powers conferred by sections 3(5) and 5(2), collectively, provide ample authorization to permit that transportation which in the Commission's judgment, is best suited to public needs. As noted, Milwaukee's request for inclusion as an equal owner in Peninsula and the right of access thereto depends upon termination of litigation and consummation of the merger authorized by the Commission in *Great Northern Pac.—Merger—Great Northern, supra*, wherein Milwaukee, as pertinent, was granted trackage rights between Longview Junction and Portland, a distance of about 46 miles.

After consummation, Milwaukee will acquire trackage rights to enable operations between Longview Junction and Portland over the main line tracks of SP&S and SP including connection with the North Portland interchange tracks. Authority of the Commission in the granting of such trackage rights to Milwaukee in order to preserve the competitive conditions in the involved territory is not questioned. Whether such grant is sufficient to create another railroad in the Portland area within the meaning of section 5(2) without the further procuring of a certificate under section 1(18) is subject to question, for the Longview-Portland track is not part of a terminal facility and the trackage rights over this track segment actually create no certificated authority. However, the evidence adduced in the *Great Northern Pac.—Merger—Great Northern* case affords ample justification for issuance of such a certificate without further hearing, upon petition therefore. In view of the pendency of the described case, the examiner recommends authorization of control on an equal ownership basis by SP&S, UP, and SP on Peninsula with access thereto, subject to sale (upon consummation of the merger in the *Great Northern Pac.—Merger—Great Northern* proceeding) by those three carriers to Milwaukee of a one-fourth equal interest in Peninsula, including access trackage rights thereto. In event the parties elect not to consummate the purchase recommended herein further petitions by these carriers requesting access to and operation over trackage of Peninsula pursuant to section 3(5) of the Act may be filed. Jurisdiction will be retained for that purpose.

ULTIMATE FINDINGS AND ORDERS

In Finance Docket No. 24679 and in the related petitions dated August 23 and November 29, 1967, upon consideration

of all evidence of record, the examiner finds (1) that control of Peninsula Terminal Company by Spokane, Portland & Seattle Railway Company and Union Pacific Railroad Company, and the inclusion of Southern Pacific Company in such control, through purchase of all outstanding stock of Peninsula Terminal Company in equal shares and the additional equal contribution by each for payment of an unsecured \$70,000 locomotive equipment open account owed by Peninsula Terminal Company to Union Stockyard Corporation, subject to sale by each, Spokane, Portland & Seattle Railway Company, Union Pacific Railroad Company, and Southern Pacific Company, of a one-twelfth interest in Peninsula Terminal Company, including pro rate contribution for the locomotive equipment, to Chicago, Milwaukee, St. Paul and Pacific Railroad Company, conditioned (a) upon consummation of the merger transaction in the *Great Northern Pac.—Merger—Great Northern proceeding*, 331 I.C.C. 869, and (b) upon the filing by Chicago, St. Paul and Pacific Railroad Company of a request for certificate of convenience and necessity authorizing railroad operation between Longview Junction, Wash., and Portland, Oreg., upon the terms and conditions set forth herein, are just and reasonable, constituting a transaction within the scope of section 5(2)(a) of the Interstate Commerce Act, and will be consistent with the public interest, and (2) that the right of access by Southern Pacific Company and Chicago, St. Paul & Pacific Railroad Company, upon consummation of the transaction described in (1) above by one or both of these carriers, to Peninsula Terminal Company trackage over intervening North Portland interchange tracks, at North Portland, Oreg., presently owned individually or jointly by Peninsula Terminal Company, Spokane, Portland & Seattle Railway Company,

Union Pacific Railroad Company, and Northern Pacific Railway Company, upon such terms and compensation for use of such intervening trackage mutually agreeable to the interested carriers, or in the event of failure to agree, as the Commission may fix as just and reasonable, to be ascertained in accordance with the provisions of section 3(5) of the Interstate Commerce Act, such compensation to be paid or adequately secured before enjoyment of use thereof may be commenced, would be in the public interest, that operation pursuant to such right of access is practicable and would not substantially impair the ability of the owning carriers to handle their business; and that the application and petitions in all other respects should be denied.

In Finance Dockets No. 24890 and No. 24891, the examiner finds that common use by Southern Pacific Company of the railroad tracks and facilities of Union Pacific Railroad Company for operation between the Union Pacific Railroad Company-Southern Pacific Company track connection at East Portland, Oreg., and tracks of Peninsula Terminal Company at North Portland, Oreg., through Albina Yard, and Peninsula Junction, conditioned upon such terms and such compensation as Union Pacific Railroad Company and Southern Pacific Company may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable, to be ascertained in accordance with the provisions of section 3(5) of the Interstate Commerce Act, such compensation to be paid or adequately secured before the enjoyment of use thereof may be commenced, would be in the public interest; that such operation is practicable and would not substantially impair the ability of Union Pacific Railroad Company to handle its business, and that the applications in all other respects should be denied.

In each of the proceedings the examiner further finds as a condition to the transactions authorized therein, that

during the period of 4 years from the effective date of the orders herein such transactions will not result in employees of the carrier or carriers by railroad affected by such orders being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this section shall not be required to continue for a longer period, following the effective date of such orders, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order.

ORDER

Premises considered, it is the ORDER of the hearing examiner in Finance Docket No. 24679, Spokane, Portland & Seattle Railway Company and Union Pacific Railroad Company—Control—Peninsula Terminal Company, in the petition of Chicago, Milwaukee, St. Paul & Pacific Railroad Company filed August 23, 1967, and in the amended petition of Southern Pacific Company, filed November 29, 1967, that:

Acquisition of an equal interest by each, Spokane, Portland & Seattle Railway Company and Union Pacific Railroad Company, and the inclusion therein of Southern Pacific Company, of control of Peninsula Terminal Company, through purchase of the outstanding stock, and the sale by each of a one-twelfth interest in Peninsula Terminal Company to Chicago, St. Paul & Pacific Railroad Company, upon, and in event of, subsequent conditions be, and it is hereby, approved and authorized, subject to conditions set forth in the findings, and the application and petitions in all other respects are hereby, denied.

The authority to control, approved herein, may be exercised by Spokane, Portland & Seattle Railway Company, Union Pacific Railroad Company, and Southern Pacific

independently of Chicago, St. Paul & Pacific Railroad Company, and if exercised, the first three named carriers shall submit for consideration and approval of this Commission three copies of the journal entries required to record the transaction.

In event subsequent conditions as set forth in the findings permit exercise of the authority herein, and such authority is exercised, by Chicago, St. Paul & Pacific Railroad Company, this carrier shall submit for consideration and approval of this Commission three copies of the journal entries required to record the transaction.

The right of access by one or both of Southern Pacific Company and Chicago, St. Paul & Pacific Railroad Company, upon consummation of the transaction described immediately above, to Peninsula Terminal Company over intervening North Portland interchange tracks of Peninsula Terminal Company, Spokane, Portland & Seattle Railway Company, Union Pacific Railroad Company, and Northern Pacific Railway Company as described in the findings herein, be, and it is hereby, approved and authorized subject to the conditions set forth in the findings and orders.

Within 90 days from the effective date of this order, Southern Pacific Railroad Company, Peninsula Terminal Company, Spokane, Portland & Seattle Railway Company, and Northern Pacific Railway Company shall submit for consideration and approval of the Commission a joint agreement containing the terms and compensation covering the use of North Portland interchange trackage, with provisions for possible inclusion of Chicago, St. Paul & Pacific Railroad Company in such agreement within 1 year from the effective date of this order, and in event such agreement for any reason cannot be reached, a petition may be filed requesting the Commission to determine such just and reasonable terms and compensation.

Northern Pacific Railway Company, one of the owners of Spokane, Portland & Seattle Railway Company, be, and it is hereby declared to be a party to these proceedings for the purpose of participation in trackage agreements described in this order.

The authority herein granted shall not be exercised prior to the date of service of a notice or order stating that this recommended order has become the order of the Commission.

Unless the authority herein granted is exercised within 1 year from the date of such notice or order, or within any extension thereafter ordered by the Commission, this order shall be of no further force and effect.

The jurisdiction of this Commission in these proceedings be, and it is hereby, expressly retained for a period of 2 years from the date of the effectiveness hereof for the purpose of making such further order or orders in these proceedings as may be necessary or appropriate.

The recital of balance sheet and other financial data shall not be construed as approval of accounting methods which have been followed, or expenditures represented thereby.

By the Commission, Samuel C. Shoup, Hearing Examiner.

Dated at Washington, D. C., this 9th day of September, A. D. 1968.

(SEAL)

H. NEIL GARSON,

Secretary

ORDER

Premises considered, it is the ORDER of the hearing examiner in Finance Docket No. 24890, Southern Pacific Co.—Common Use of Terminal Facilities—Peninsula Ter-

minal Co., and in Finance Docket No. 24891, Common Use of Certain Terminal Facilities—Union Pacific Co., that the request therein for common use by Southern Pacific Company of the railroad tracks and facilities of Union Pacific Railroad Company as described in the findings herein, be, and it is hereby, approved and authorized subject to the conditions set forth in the findings and order herein; and that the applications in all other respects are denied.

Within 90 days from the effective date of this order the Union Pacific Railroad Company and the Southern Pacific Company shall submit for consideration and approval of the Commission a joint agreement containing the terms and compensation covering the use of tracks and terminal facilities herein authorized; and in event such agreement for any reason cannot be reached, a petition may be filed requesting the Commission to determine such just and reasonable terms and compensation.

The authority herein granted shall not be exercised prior to the date of service of the order adopting this recommendation as the order of the Commission, or of a notice stating that this recommended order has become the order of the Commission.

The jurisdiction of this Commission in these proceedings be, and it is hereby, expressly retained for a period of 2 years from the date of the effectiveness hereof for the purpose of making such further order or orders in these proceedings as may be necessary or appropriate.

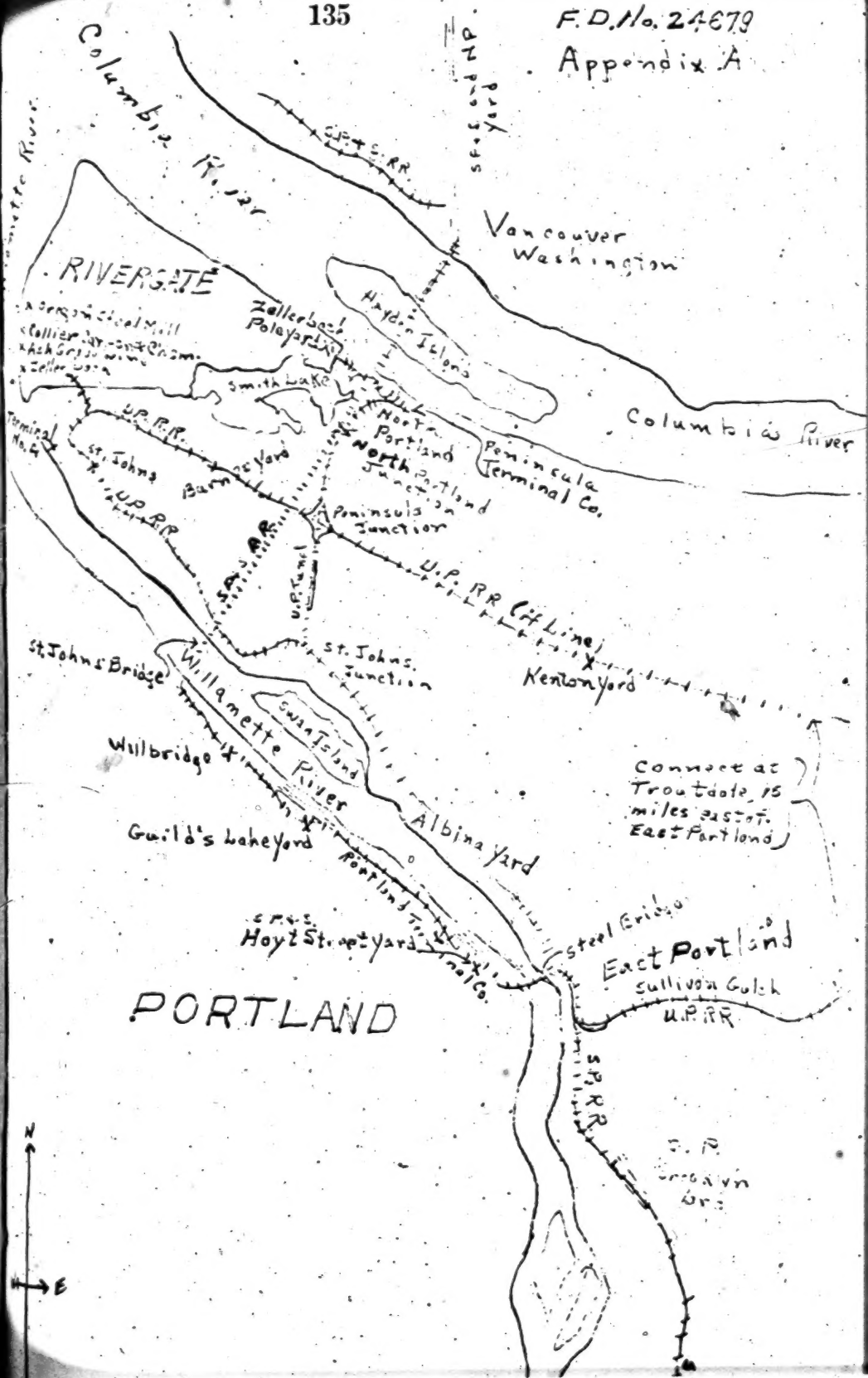
By the Commission, Samuel C. Shoup, Hearing Examiner.

Dated at Washington, D. C., this 9th day of September, A. D. 1968.

(SEAL)

H. NEIL GARSON,

Secretary



APPLICATION OF SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY UNDER SECTION 5(2) OF THE INTERSTATE COMMERCE ACT, FOR AUTHORITY TO ACQUIRE CONTROL OF PENINSULA TERMINAL COMPANY THROUGH OWNERSHIP OF ALL OF ITS OUTSTANDING CAPITAL STOCK.

Spokane, Portland and Seattle Railway Company (SP&S) and Union Pacific Railroad Company (Union Pacific) sometimes herein referred to jointly as "Applicants" hereby apply to the Interstate Commerce Commission (Commission) under Section 5(2) of the Interstate Commerce Act for authority to acquire control of Peninsula Terminal Company (Peninsula) through ownership of all of Peninsula's capital stock presently owned by United Stockyards Corporation (United).

Pursuant to the provisions of Part 52 of Title 49 of the Code of Federal Regulations, Applicants state:

52.2

(a) *Identification of applicant, or of each applicant, if there are two or more applicants, showing:*

(a)1. The full and correct name and the business address of each of the applicants are:

Spokane, Portland and Seattle Railway Company,
1112 American Bank Building,
621 S. W. Morrison Street,
Portland, Multnomah County, Oregon 97205.

Union Pacific Railroad Company,
1416 Dodge Street,
Omaha, Douglas County, Nebraska 68102.

(a)2. Applicants are corporations and each is doing business under its foregoing respective corporate name.

(a)3. Applicants are carriers by railroad, subject to Part I of the Interstate Commerce Act.

(a)4. SP&S owns and operates properties situated in the states of Oregon and Washington.

Union Pacific owns and operates properties situated in the states of California, Colorado, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, Oregon, Utah, Washington and Wyoming.

Peninsula owns and operates properties situated in the state of Oregon.

. . .

(a)6. Both Applicants were organized as common carriers by railroad before the enactment of the Transportation Act of 1920 and have been continuously so engaged to the present date. Accordingly, Applicants have not been required to procure authorization from the Commission to engage in interstate or foreign commerce as a carrier by railroad.

Peninsula has been authorized to engage in interstate or foreign commerce as a terminal switching railroad in Multnomah County, Oregon, by Certificate and Order issued October 18, 1930, in Finance Docket No. 8389, 166 ICC, 597.

(b) Information respecting Applicant, or each Applicant if there are two or more applicants, as follows:

(b)1(i). SP&S is a corporation organized under the laws of the State of Washington, on August 23, 1905, under the name of Portland and Seattle Railway Company. The

name of the corporation was changed to Spokane, Portland and Seattle Railway Company on February 1, 1908. SP&S was authorized to do business in the State of Oregon on October 14, 1905. Union Pacific was incorporated in Utah on July 1, 1897, and was authorized to do business in the State of Oregon July 30, 1932.

. . .

—(c) *Information respecting the nature of the transaction proposed and the terms and conditions thereof as follows:*

(c)1. The proposed transaction is the acquisition of control of Peninsula Terminal Company by SP&S and Union Pacific through the purchase of all of Peninsula's outstanding capital stock from its present owner, United Stockyards Corporation.

(c)2. The stock of Peninsula Terminal Company will be sold to Applicants for a purchase price of \$299,405, adjusted to reflect certain changes in the value of the property of Peninsula, occurring between February 28, 1967, and the closing date. Each applicant will purchase one-half of the outstanding shares and will pay one-half of the agreed price therefor.

The closing will take place in Portland, Oregon, not later than the first day of the month following the month in which an order of the Commission which approves the sale, and which, if conditional, has been accepted by the parties to the sale, becomes final.

The terms of the sale shall be cash, to be paid in full upon the closing date and upon the delivery of all of the outstanding stock of Peninsula to the Applicants.

(c)3. There are no financial or other relationships, direct or indirect, not disclosed in the foregoing responses, existing at the present time between Applicants and Peninsula or United, with exception of:

Agreement between Peninsula, Oregon-Washington Railroad & Navigation Company, Union Pacific Railroad Company and SP&S, dated August 31, 1938, covering construction, maintenance and operation of interchange tracks at North Portland, Oregon as supplemented and amended by agreements between the same parties dated April 10, 1952, and May 2, 1955.

Agreement between Peninsula, SP&S and Union Pacific Railroad Company, 1936, Car Hire.

Permit to construct single track railway across and under lines of SP&S dated September 20, 1909 to Union Meat Company assigned to Swift & Company May 31, 1919 and further assigned to Peninsula October 29, 1936.

Agreement of January 29, 1917 between Northern Pacific, SP&S and Peninsula Industrial Company concerning fill to be placed under trackage of Applicant by Peninsula Industrial Company supplemented July 31, 1918 to provide for change in location of roadway opening, and assigned to Peninsula on September 9, 1940.

Agreement dated September 7, 1954, between Peninsula, Oregon-Washington Railroad & Navigation Company, SP&S and Swift & Company regarding easement on land for a building to house car inspector and yard clerk.

(c)4. Peninsula's main track extends westward from North Portland Junction a distance of 0.63 miles and eastward from said point a distance of 0.69 miles, with some 2.47 miles of secondary and spur tracks between these limits making a total of 3.79 miles of track as shown in Exhibit 6.

(c)5. The proposed transaction involves the purchase of all of the outstanding capital stock of Peninsula and therefore all of its property.

(c)6. It is Applicants' understanding that the Commission has accepted a valuation of the properties of Peninsula on the basis of historical book cost. A detailed statement of the cost, less depreciation, of Peninsula's properties as of February 28, 1967, is attached hereto as Exhibit B to Exhibit 7. As shown in such exhibit, this net cost is \$196,938.31. No additions and betterments have been made since February 28, 1967.

Peninsula employed the American Appraisal Company to value its properties as of November 30, 1962. Based upon that appraisal, Peninsula established the following valuation as of February, 1963, for the purpose of the sale of its properties:

Land 13.17 acres at \$8,125 per acre	\$107,000
Roadway, structures and equipment less observed depreciation and exclusive of locomotives	163,100
Locomotives	19,517
Inventories and supplies	1,593
Total	<u><u>\$291,210</u></u>

A more detailed summary of the valuation by American Appraisal is attached hereto as Exhibit 14.

Net additions and betterments to Peninsula's properties between February, 1963, and February 28, 1967, are as follows:

Net additions, betterments and retirements February 1963 to February 28, 1966	\$ 7,575.00
Net additions February 28, 1966 to February 28, 1967 (including one 70-ton diesel locomotive and one 50-ton diesel locomotive)	67,311.00
	<hr/>
	\$ 74,886.00
Less:	
Two retired steam locomotives as included in previous proposal	19,517.00
Current liabilities in excess of current assets	47,174.00
	<hr/>
	66,691.00
	<hr/>
Net	\$ 8,195.00
	<hr/>

Thus the appraised value of Peninsula's outstanding stock for the purpose of the sale is:

Valuation February 1963	\$291,210.00
Net additions and betterments to February 28, 1967	8,195.00
	<hr/>
Total	\$299,405.00

(c)7. Applicants and Peninsula accrue depreciation in accordance with accounting rules prescribed by the Commission. The rates by classes of property are shown in their reports to the Commission.

(c)8. The 1,500 shares of outstanding stock of Peninsula are owned entirely by United. Hence there is no ascertainable market value of such shares. The estimated value per share is \$199.60 based upon the selling price of

\$299,405, to be adjusted as provided in the contract to purchase, which selling price in turn is based upon the appraised value described in paragraph (c)6 hereof.

(c)9.

(i) One 70-ton diesel locomotive and one 50-ton diesel locomotive were sold to Peninsula by United in 1966.

(ii) The purchase price of \$70,000 is still due and payable by Peninsula to United with no maturity date and no accrued interest. It is carried on the books of Peninsula as an unsecured account payable.

(iii) Applicants have agreed with United that at the time of closing the contract for sale of Peninsula's outstanding stock, they will each pay to Peninsula \$35,000 as a contribution to capital. Applicants and United have also agreed that promptly after closing, the Applicants will cause Peninsula to use said contribution to capital for the purpose of paying said account payable to United in full without interest.

(c)10. Not applicable, no consolidation or merger is proposed.

(d) *Facts and circumstances relied upon to show that the proposed transaction is within the scope of Section 5(2)(a) of the Interstate Commerce Act, will be consistent with the public interest, and will otherwise be within the requirements of Section 5, particular:*

(d)1. In case of any proposed transaction:

(i) The transaction covered by the application will be consistent with the public interest. As shown on Exhibit 6 attached hereto, the River Gate Industrial Area in North Portland being developed by The Port of Portland Commission lies approximately one-half mile to the west

of Applicant's physical connection to Peninsula. The northeasterly portion of said area is now reached by the western terminus of the tracks of Peninsula, and proposed acquisition will enable Applicants to provide rail service to said industrial area over the lines of Peninsula.

(ii) The terms of the agreement between the owner of Peninsula stock and Applicants were arrived at through arm's length bargaining and there is unanimous agreement by the parties on said terms.

If the proposed acquisition is authorized, Applicants intend to continue the operations of Peninsula as a separate carrier. It is not presently possible to indicate any specific economies to be effected through control by Applicants of Peninsula.

No major changes in traffic or revenues are anticipated in the immediate future; however, it is anticipated that within the foreseeable future substantial new traffic and revenues will be derived as a result of the development of the said River Gate Industrial Area by The Port of Portland Commission.

Applicants are of the opinion that their operation of said company will be to the mutual benefit of the three carriers and will be consistent with the public interest.

(iii) Control by Applicants of Peninsula will assure the territory served by that company of continued adequate rail transportation.

(iv) There will be no increase in fixed charges.

(v) Applicants intend to continue the operation of Peninsula as a separate carrier with present Peninsula employees so that the proposed acquisition will have no adverse effect on such employees.

(vi) No guaranty or assumption of payments of dividends or fixed charges is contemplated in the proposed transaction.

(d)2. Also, if the proposed transaction involved a railroad:

(i) The public interest is not adversely affected as Applicants are the only railroads connecting with Peninsula and all routes and channels of trade via existing junctions and gateways will be maintained.

(ii) Applicants have no objection to the Commission's prescribing conditions for the protection of employees on the same basis as set forth in *Chicago & N. W. Ry. Co. Merger*, 261 ICC 672.

* * *

WHEREFORE, Applicants pray that the Commission issue its order or orders authorizing Applicants under Section 5 of the Interstate Commerce Act to acquire control of Peninsula through acquisition of all of the issued and outstanding capital stock of Peninsula and issue such other order or orders and make such other findings as may be appropriate in the premises.

Dated: At St. Paul, Minnesota, this 18th day of July, 1967, and

At Omaha, Nebraska, this 21st day of July, 1967.

* * *

EXHIBIT 7 TO SP&S/UP APPLICATION

CONTRACT TO PURCHASE

THIS AGREEMENT, made and entered into as of February 28, 1967, by and between Spokane, Portland and Seattle Railroad Company, a Washington corporation, and Union Pacific Railroad Company, a Utah corporation (hereinafter called "Buyers"), and United Stockyards Corporation, a Delaware corporation (hereinafter called "seller"),

WITNESSETH:

Seller owns all of the outstanding capital stock of Peninsula Terminal Company, an Oregon corporation (hereinafter called "Peninsula"). Peninsula and Buyers are common carriers by railroad, subject to Part I of the Interstate Commerce Act.

Seller wishes to sell and Buyers wish to purchase all of the outstanding stock of Peninsula subject to the terms of this agreement.

Now, THEREFORE, it is agreed by the parties hereto as follows:

1. *Sale of Stock; Contributions to Capital.*

(a) Subject to the approval of the Interstate Commerce Commission, Seller sells to each of the Buyers one half of all of the outstanding shares of common stock of Peninsula for a purchase price of \$149,702.50 to each of the Buyers, and Buyers, subject to the approval of the Interstate Commerce Commission and in reliance upon the representations and warranties of Seller contained herein, and subject to the terms and conditions of this agreement,

shall purchase such shares from Seller. The purchase price shall be increased or decreased at the time of closing by the amount (rounded to the nearest even dollar) by which the total Peninsula stockholders' equity on the closing date exceeds or is less than \$157,504.00, which is the amount of the total stockholders' equity (rounded to the nearest even dollar) as of February 28, 1967, as shown in Exhibit A hereto.

(b) Seller has heretofore sold a Peninsula one 70-ton diesel locomotive and one 50-ton diesel locomotive for a total purchase price of \$70,000. This indebtedness is an unsecured account payable by Peninsula to Seller and is so carried upon the books of Seller. Each of the Buyers agrees that at the time of closing it will make a contribution to the capital of Peninsula in the amount of \$35,000. Promptly after the closing Buyers agree to cause Peninsula to use said contributions to capital for the purpose of paying said account payable to Seller, in full, without interest.

2. Closing.

The closing date hereunder shall be not later than the first day of the month following the month in which an order of the Interstate Commerce Commission which approves this sale and which, if conditional, has been accepted by the parties hereto, becomes final. The closing shall take place in Portland, Oregon. At the closing, Seller shall deliver to each of the Buyers, free and clear of all encumbrances, certificates for one half of all the outstanding shares of stock of Peninsula, negotiable form, with all requisite stock transfer stamps attached. Upon such delivery, Buyers, subject to the terms and conditions

hereof, will deliver to Seller their checks for their share of the total purchase price, payable to the order of the Seller. At the closing, each Buyer will deliver to Peninsula its check payable to the order of Peninsula in the amount of \$35,000 in payment of the contributions to capital described in paragraph 1(b) hereof.

3. *Representations and Warranties.*

Seller represents and warrants as follows:

(a) *Organization and Standing of Peninsula.*

Peninsula is a corporation duly organized, validly existing and in good standing under the laws of the State of Oregon. A copy of Peninsula's Articles of Incorporation and all amendments thereto, to date, certified by the Corporation Commissioner of the State of Oregon, and a copy of Peninsula's Bylaws, as amended to date, certified by Peninsula's secretary, which have been delivered to Buyers, are complete and correct as of the date of this agreement. Peninsula is not authorized to do business in any state other than Oregon.

(b) *Subsidiaries.*

Peninsula has no subsidiaries.

(c) *Capitalization.*

Peninsula's entire authorized capital stock consists of 2,500 shares of common stock of the par value of \$100 per share, of which 1,500 shares are issued and outstanding. All such shares have been validly issued and are fully paid and nonassessable.

(d) *Stock Ownership.*

Seller represents and warrants that it is the owner, free and clear of any encumbrances, of all of the outstanding shares of stock of Peninsula.

(e) *Financial Statements.*

Attached hereto, marked Exhibit A, is a balance sheet statement showing the condition of Peninsula as of February 28, 1967. Seller warrants that this statement is true and correct and has been prepared in accordance with generally accepted accounting principles, and accurately reflects the operation of Peninsula. Seller will prepare, or cause to be prepared, and deliver to Buyers, at the time of closing, a balance sheet statement showing the condition of Peninsula at the time of closing. In preparing such balance sheet the same accounting practices shall be used as were used in preparing Exhibit A.

(f) *Absence of Undisclosed Liabilities.*

Except to the extent reflected or reserved against in Peninsula's balance sheet of February 28, 1967, Peninsula, as of such date, had no liabilities of any nature, whether accrued, absolute, contingent or otherwise, including without limitation, tax liabilities due or to become due, and whether incurred in respect of or measured by Peninsula's income for any period prior to February 28, 1967, or arising out of transactions entered into, or any state of facts existing, prior thereto. Seller represents and warrants that it does not know or have reasonable grounds to know of any basis for the assertion against Peninsula, as at February 28, 1967, of any liability of any nature or in any amount not fully reflected or reserved against in the balance sheet of February 28, 1967.

(g) *Absence of Certain Changes.*

After February 28, 1967, there shall not be

- (1) any change in Peninsula's financial condition, assets; liabilities, or business, other than changes in the ordinary course of business, none of which being materially adverse;

(2) any damage, destruction or loss, whether or not covered by insurance materially and adversely affecting Peninsula's properties or business;

(3) any declaration, or setting aside, or payment of any dividend or other distribution in respect of Peninsula's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock;

(4) any increase in the compensation payable or to become payable by Peninsula to any of its officers, employees or agents, or any bonus payment or arrangement made to or with any of them; or

(5) any labor trouble, or any event or condition of any character, materially and adversely affecting Peninsula's business or prospects.

(h) *Title to and Condition of Properties.*

Attached hereto, marked Exhibit B, is a list and description of Peninsula's real and personal properties which are reflected in the balance sheet of February 28, 1967. Peninsula has good and marketable title to all its properties and assets, real and personal, including those reflected in the said balance sheet of February 28, 1967 (except as since sold or otherwise disposed of in the ordinary course of business), subject to no mortgage, pledge, lien, conditional sale contract, encumbrance or charge, except for minor imperfections of title and encumbrances, if any, which are not substantial in amount, do not materially detract from the value of the properties subject thereto, or materially impair Peninsula's operations, and have arisen only in the ordinary course of business. All buildings and equipment of Peninsula are in reasonable condition and

repair, and substantially unchanged from February 28, 1967, and in conformity with all applicable ordinances and regulations, and building, zoning and other laws.

(i) *Contracts*

Peninsula has no presently existing contract or commitment extending beyond the 31st day of December, 1967, or involving payment by Peninsula of more than \$1,000, except as listed in Exhibit C attached hereto and by this reference made a part hereof.

Peninsula has complied with all the provisions of such instruments and all other contracts and commitments to which it is a party and is not in default under any of them.

(j) *Directors and Officers; Compensation; Bank.*

Seller has delivered to Buyers a true and complete list, as of the date of this agreement, certified by Peninsula's treasurer, showing:

(1) the names of all Peninsula's directors and officers;

(2) the names of all administrative and executive personnel, together with a statement of the full amount paid or payable to each such person for services rendered or to be rendered in 1967, and the basis therefor;

(3) the name of each bank in which Peninsula has an account or safe deposit box, and the names of all persons authorized to draw thereon, or to have access thereto; and

(4) the names of all persons holding powers of attorney from Peninsula, and a summary statement of the terms thereof.

(k) *Litigation.*

Except for suits of a character incident to the normal conduct of Peninsula's business and involving not more than \$500 in the aggregate, there is no litigation or proceeding pending, or to the Seller's knowledge threatened, against or relating to Peninsula, its properties or business, nor does the Seller know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relative to Peninsula, its properties, or business.

(l) *Disclosure.*

No representation or warranty by the Seller in this agreement, nor any statement or certificate furnished or to be furnished to the Buyers pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

4. *Access and Information.*

Seller shall cause Peninsula to give to Buyers and to Buyers' counsel, accountants, engineers and other representatives, full access, during normal business hours throughout the period prior to the closing, to all of Peninsula's properties, books, contracts, commitments, and records, and shall furnish the Buyers during such period with all such information concerning Peninsula's affairs as the Buyers reasonably may request.

5. *Conduct of Business During Closing.*

Seller covenants that, pending the closing:

- (a) Peninsula's business will be conducted only in the ordinary course.

(b) No change will be made in Peninsula's certificate of incorporation or bylaws, except as may be first approved in writing by Buyers.

(c) No change will be made in Peninsula's authorized or issued capital stock.

(d) No dividend or other distribution or payment will be declared or made in respect of Peninsula's capital stock.

(e) No change will be made in the compensation payable or to become payable by Peninsula to any officer, employee or agent, nor will any new bonus payment or arrangement be made by Peninsula to or with any officer, employee or agent thereof.

(f) No money will be borrowed by Peninsula without the prior written approval of the Buyers.

(g) No contract or commitment will be entered into by or on behalf of Peninsula extending beyond December 31, 1967, except normal commitments, which in any single case will not involve payment by Peninsula of more than \$1,000.

(h) No change will be made affecting the personnel or banking or safe deposit arrangements referred to in subparagraph (j) (3) of paragraph 3 without the Buyers' prior written approval.

(i) Except as otherwise requested by Buyers, the Seller will cause Peninsula to use its best efforts (without making any commitment on the Buyers' behalf) to preserve Peninsula's business organization intact; to keep available to Peninsula the services of its present officers and employees; and to preserve for Peninsula the goodwill of its suppliers, customers and others having business relations with Peninsula.

6. *Conditions Precedent.*

All obligations of the Buyers under this agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

(a) *Representations and Warranties True at Closing.*

Seller's representations and warranties contained in this agreement shall be true at the time of closing as though such representations and warranties were made at such time.

(b) *Performance.*

Seller shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by it prior to or at the closing.

(c) *Officers' Certificate.*

Seller shall have delivered to the Buyers a certificate of Peninsula's president and treasurer, dated the closing date, certifying in such detail as the Buyers may specify to the fulfillment of the conditions specified in subparagraphs (a) and (b) of this paragraph.

7. *Indemnification.*

Seller shall indemnify and hold harmless Peninsula and the Buyers at all times after the date of this agreement, against and in respect of

(a) all liabilities of Peninsula of any nature, whether accrued, absolute, contingent or otherwise, existing at February 28, 1967, to the extent not reflected or reserved against in full in Peninsula's balance sheet of that date, including, without limitation, any tax liabilities to the extent not so reflected or reserved against, accrued in respect of, or measured by Peninsula's income for any period prior

to February 28, 1967, or arising out of transactions entered into, or any state of facts existing, prior to such date;

(b) all liabilities of, or claims against, Peninsula arising out of the conduct of Peninsula's business between February 28, 1967, and the closing otherwise than in ordinary course, or arising out of any presently existing contract or commitment of the character described in subparagraph (i) of paragraph 3 and not listed therein, or arising out of any contract or commitment entered into or made by Peninsula between the date hereof and the closing except as permitted by the provisions of subparagraph (g) of paragraph 5;

(c) any nonpayment on demand, when due, following the closing, on any of the accounts receivable of Peninsula existing on the closing date;

(d) any damage or deficiency resulting from any misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of Seller, under this agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Buyers hereunder; and

(e) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses incident to any of the foregoing. Seller shall reimburse Peninsula or the Buyers, on demand, for any payment made by Peninsula or either of the Buyers at any time after February 28, 1967, in respect of any liability or claim to which the foregoing indemnity relates.

After the closing date, Buyers will cause Peninsula to cooperate with Seller in connection with Seller's assumption or defense of the liabilities described in subparagraph (a) of this paragraph.

8. *Interstate Commerce Commission Approval.*

Buyers will promptly prepare and file with the Interstate Commerce Commission an application for an order approving this sale. The parties hereto will, at their own separate expense, cooperate in the preparation, filing and prosecuting of the application, and in preparing for and participating in any hearings or other and further administrative or court proceedings that may result from the filing of the application, and in that connection each party will pay its own fees for its own witnesses and attorneys.

If the Interstate Commerce Commission issues an order denying the application for approval of this sale, this agreement shall thereupon terminate and be of no further force or effect. If the Interstate Commerce Commission issues an order approving this sale, but subject to one or more conditions, any party hereto may, in the exercise of its sole discretion, reject such conditions and the Commission's order and this agreement shall thereupon terminate and be of no further force or effect. If the order approves the sale upon any condition, each party hereto shall have 15 days after the effective date of the order within which to notify the other parties in writing whether it accepts or rejects the condition and the Commission's order. If any party fails to give such written notice to the other parties within such period of time, it shall be deemed to have elected to have accepted such condition or conditions and the Commission's order.

9. *Assignment.*

This agreement shall extend to the successors of the parties hereto but no assignment hereof will be binding unless agreed to by each of the parties hereto.

10. *Continued Management by Seller.*

After the closing date, Seller shall manage the operations of Peninsula in accordance with the policies, conditions and standards established from time to time by Peninsula's Board of Directors and also in accordance with the requirements of paragraph 5 of this agreement relating to the conduct of the business of Peninsula during the closing period. Such management services shall include, without limitation thereto, the furnishing of:

- (a) supervisory, administrative, clerical, accounting, stenographic and all other necessary managerial office personnel and services, and of substantially the same scope as furnished to Peninsula by Seller during recent years prior to the closing hereof;
- (b) office space including all required utilities;
- (c) office supplies; and
- (d) personnel (who shall be employed and paid for by Peninsula) to load and unload stock cars shipped from and delivered to the Portland, Oregon, stockyards of Seller.

For such management services Buyers will pay Seller a management fee of \$10,000 per year, payable quarterly. Seller may terminate its management services by giving six months' written notice of termination. Buyers may terminate such management services upon 30 days' written notice.

11. *Unearned Insurance Premiums Paid by Seller.*

At the time of closing and at reasonable periods thereafter, the parties hereto shall have an accounting for all unearned insurance premiums paid by Seller on insurance policies which cover risks of Peninsula.

12. *Crossing Permit.*

Seller owns approximately 40 acres of real property on either side of one of the main lines of Peninsula. Promptly after the closing date Peninsula will grant to Seller a permit for a crossing over its tracks to provide access to both areas of Seller's said forty-acre parcel. The crossing agreement shall be in writing and on the form attached hereto marked Exhibit D and by this reference made a part hereof.

13. *Resignation of Directors and Officers.*

At the closing Seller shall make available to Buyers, unless otherwise requested by them, the written resignation of Peninsula's directors or officers and shall take, or cause to be taken, such action as Buyers may request with respect to changes in directors and officers.

14. *Notices.*

Notice shall be given hereunder by depositing the same in the United States mail in an envelope, with postage prepaid, addressed to the parties at the following addresses:

United Stockyards Corporation,
141 West Jackson Boulevard,
Chicago, Illinois 60604.

Union Pacific Railroad Company,
828 Pittock Block,
Portland, Oregon 97205.

Spokane, Portland and Seattle Railway Company,
American Bank Building,
Portland, Oregon 97205

Notices shall be deemed given when the same are deposited in the United States mail in the manner herein provided.

15. *Consolidated Tax Return.*

After the closing date Buyers shall cause Peninsula to execute and/or deliver such consents as Seller may require to effect the filing of a consolidated income tax return to include Peninsula's operations during the period of Seller's ownership.

16. *Location of Tracks and Buildings—Grade Crossings.*

Seller warrants that all of Peninsula's existing tracks and buildings are located upon Peninsula's real property described in Exhibit B hereto, and that Peninsula has or will obtain, prior to the closing, in a form satisfactory to Buyers all conveyances and all city, county, state and other governmental rights, permits and approvals which Buyers deem necessary for the use and operation of such tracks and property and the use and operation of all grade crossings of Peninsula's tracks.

17. *Board Approval.*

This agreement shall be effective as of the date hereof, subject, however, to the approval ^{EHB NSW RWH} ~~within 90 days from the~~ date hereof of the Executive Committee of the Board of Trustees of Spokane, Portland and Seattle Railway Company, the Board of Directors of United Stockyards Corporation and the Executive Committee of Union Pacific Railroad Company.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

EXHIBIT 7—EXHIBIT A THERETO
PENINSULA TERMINAL COMPANY
North Portland, Oregon

STATEMENT OF ASSETS AND LIABILITIES AT FEBRUARY 28, 1967

ASSETS

CURRENT ASSETS

Cash on hand	\$ 17,364.79
Accounts receivable	7,888.07
Materials and supplies	8,669.12
Prepayments, insurance, etc.	1,116.58

Total Current Assets .. \$ 35,038.56

PROPERTIES (Transportation)

Road and equipment	\$208,363.53
Less accrued depreciation	11,425.22

Total Transportation Property \$196,938.31

MISCELLANEOUS (Physical Property)

7,740.00

Total Assets \$239,716.87

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES

Wages payable	2,240.43
Accounts payable	73,808.96
Federal Income Taxes	3,380.52
Other taxes	1,612.00
Other current liabilities	1,170.77

Total Current Liabilities .. \$ 82,212.68

CAPITAL STOCK

1,500 shares of common stock ..	\$150,000.00
Retained income	7,504.19

Total Shareholders' Equity .. 157,504.19

Total Liabilities and Shareholders' Equity \$239,716.87

EXHIBIT 7—EXHIBIT B THERETO.

(Page 1 only)

PENINSULA TERMINAL COMPANY

North Portland, Oregon

REAL AND PERSONAL PROPERTY AT FEBRUARY 28, 1967

<i>Description</i>	<i>Account No.</i>	<i>Amount</i>
Engineering	1	\$ 1,904.58
Land for transportation purposes* ..	2	44,786.80
Grading	3	16,801.96
Ties	8	10,815.94
Rails	9	15,561.71
Other track material	10	11,488.08
Ballast	11	2,413.68
Track laying and surfacing	12	13,653.99
Fences, snow sheds and signs	13	335.27
Stations and office buildings	16	4,727.21
Fuel stations	19	115.28
Shops and engine houses	20	10,055.72
Roadway machines	37	572.62
Roadway small tools	38	136.89
Shop machinery	44	1,324.16
Diesel locomotive—1-50 ton	52	16,110.84
" " —1-70 ton	52	16,110.84
Organization expense	71	4,088.83
Law	76	110.90
Interest during construction	76	561.19
		<hr/>
		\$208,363.53
Less depreciation		11,425.22
		<hr/>
Net physical property for transportation purposes		\$196,938.31
		<hr/>

* All real property owned by Peninsula Terminal Company is described in Pioneer National Title Insurance Company's Lot Book Report dated September 12, 1966, Order No. 34660, which report is incorporated herein by reference. A copy of such report is attached hereto.

PETITION FOR INCLUSION OF CHICAGO,
MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

Pursuant to Section 5(2)(d) of the Interstate Commerce Act, 49 U. S. C. Sec. 5(2)(d), and Rule 102 of the Commission's General Rules of Practice, 49 CFR Sec. 1.102, the Chicago, Milwaukee, St. Paul and Railroad Company (hereinafter "Milwaukee") herewith petitions for inclusion in the above-captioned transaction, pleading that it is a railroad in the territory involved in this transaction and that this transaction, if consummated as proposed by Applicants herein without Milwaukee's inclusion on the terms specified below, would not be consistent with the public interest; and further that if this transaction is approved by the Commission to include Milwaukee on the below-stated terms it will be consistent with the public interest. In support of this Petition, Milwaukee respectfully states as follows:

I

The Milwaukee is a Wisconsin corporation and operates as a common carrier by railroad, subject to Part I of the Interstate Commerce Act, in the states of Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington and Wisconsin. Milwaukee's principal transcontinental line extends from Chicago to Longview, Washington, a point on the lower Columbia River 46 rail miles north of Portland, Oregon.

II.

Applicant, Spokane, Portland and Seattle Railway Company ("SP&C"), is an applicant with Great Northern Railway Company ("GN") and Northern Pacific Railway Company ("NP") in F. D. 21478, *et al.*, the so-called "Northern Lines Merger" proceeding, in which SP&S, GN, NP and the Chicago, Burlington and Quincy Railroad Company ("Burlington") seek authority to (1) merge the operations, properties and franchises of the Great Northern, Northern Pacific and Pacific Coast into a new company known as Great Northern Pacific & Burlington Lines, Inc.; (2) acquire on behalf of the new company stock ownership of all subsidiary and affiliated companies of the Great Northern and Northern Pacific, whether owned solely or jointly by one or both of these parent railroads (including SP&S) and acquire on behalf of the new company all leasehold rights, trackage rights, joint ownership in or use of any line or lines of railroad possessed by Great Northern, Northern Pacific or Pacific Coast; (3) merge into the new company the operations and properties and franchises of the Burlington and acquire through stock ownership all subsidiary or affiliated carriers of the Burlington and acquire all trackage rights, leasehold rights or joint ownership or user rights of the Burlington; and (4) lease on behalf of the new company the properties and assets of the SP&S for a term of 10 years, and acquisition and control by the new company as such lessee of sole or joint control, as the case may be, of all carriers subsidiary to or affiliated with SP&S at the time of the lease, and acquisition and exercise, during the term of such lease by the new company as lessee, of all leasehold rights, all trackage rights and all joint ownership in and rights of joint use of SP&S in any railroad line or lines and terminals incident thereto possessed by SP & S at the time of lease.

III.

Milwaukee, by leave of the Commission, intervened in F. D. 24178, *et al.*, and proposed certain conditions to the approval of the transaction proposed therein. Following denial of that application by the Commission on March 3, 1966, a petition for reconsideration was granted by the Commission, and rehearing and reargument were held; a decision by the Commission is imminent. Approval of the transaction conditioned upon acceptance of Milwaukee's conditions is expected.

IV.

Applicant SP&S, together with GN, NP and Burlington, became a party to a contract with Milwaukee entered October 26, 1966, which is of record in F. D. 24178, *et al.*, and specifically provides that, upon consummation of the transaction proposed in F. D. 24178, *et al.*, Milwaukee shall be allowed entry to Portland, Oregon via trackage rights over present NP and SP&S tracks between Longview Junction, Washington, and Portland, Oregon, including all main, second main, passing and industry tracks, and over SP&S tracks in the Line D valuation area in Portland, Oregon, with the right to handle freight traffic to or from Longview Junction, Portland, and all intermediate points, regardless of origin or destination of said traffic (Exh. 250, pp-6-9, "Condition No. 2"). Wherefore, upon consummation of the transaction in F. D. 24178, *et al.*, Milwaukee will be an additional railroad connecting with Peninsula Terminal Company with the unrestricted right to serve the traffic originating or terminating on the lines of Peninsula Terminal Company, including that under development by the Port of Portland Commission in the Rivergate Industrial Area.

V.

The instant transaction, if approved by the Commission without inclusion of Milwaukee upon the terms stated below, would have the effect of foreclosing Milwaukee direct service to all the industries now or in the future to be located on the lines of Peninsula Terminal Company. With fifty per cent of Peninsula Terminal Company stock in the hands of Union Pacific Railroad Company, not a party to the contract referred to above, Milwaukee will not have any right similar to that sought by applicants herein (application p. 20) to operate over or obtain trackage rights in the lines of Peninsula Terminal Company. Industries on the lines of Peninsula Terminal Company will thus be denied the single-line service of Milwaukee to such points as Seattle, Tacoma, Spokane, Minneapolis-St. Paul, Kansas City, Chicago, Milwaukee, and Terre Haute, contrary to the public interest.

VI.

Inclusion of Milwaukee in the instant application, on the other hand, upon equal terms with those of applicants, will provide the shippers and industries now and in the future to be located on the lines of Peninsula Terminal Company with the benefits of additional rail service to such points as named above on the Milwaukee's lines, and to others not served by applicants, consistent with the public interest in this transaction.

VII.

The terms under which Milwaukee seeks inclusion in this transaction are as follows:

1. Milwaukee be authorized to purchase one-third of Peninsula Terminal Company's outstanding capital

stock from its present owner, United Stockyards Corporation; upon the same terms and for the same per-share consideration as set forth in the instant application, pp. 15 and 18-19.

2. Milwaukee to pay one-third the contribution to capital of \$70,000 to cover the purchase price of the one 70- and one 50-ton diesel locomotives sold by United Stockyards Corporation to Peninsula Terminal Company, as applicants propose on page 19 of the instant application.

3. That Milwaukee be granted the right to acquire trackage rights over intervening connecting trackage jointly owned by applicants, from SP&S main line to Peninsula Terminal Company's lines upon such reasonable terms and conditions, and for such consideration, as Milwaukee and applicants may negotiate, or, failing such negotiations, upon such terms and conditions and for such consideration as the Commission may find just and reasonable.

WHEREFORE, Milwaukee prays:

1. That the Commission enter an order granting this Petition.

2. That, unless applicants herein stipulate with Milwaukee that its inclusion in the instant transaction be allowed on an equal basis, the instant application be set for public hearing in Portland, Oregon, for the purpose of receiving evidence in support of this Petition.

3. That the Commission order such other and further relief for Milwaukee as may be meet.

Dated at Chicago, Illinois, this 22nd day of Augst, 1967.

AMENDED PETITION OF SOUTHERN PACIFIC
COMPANY IN INTERVENTION, STATING RE-
QUEST FOR INCLUSION AND FOR TRackage
RIGHTS

COMES now Southern Pacific Company, party to the above captioned proceeding, to file its amended petition in intervention, stating requests for inclusion and for certain trackage rights:

I

Southern Pacific Company is a Delaware corporation, which owns and operates lines of railroad in the states of Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas and Louisiana. It is a common carrier by railroad subject to Part I of the Interstate Commerce Act.

II

Petitioner has a substantial interest in this proceeding and in the provision of rail service in and about the City of Portland, Ore. Petitioner has served Portland, directly and through predecessor companies, continuously since April 1868, and has provided rail service from Portland to points in California and other states served by it continuously since December 17, 1887. Petitioner has been an integral part of the industrial and commercial community of Portland for almost 100 years.

III

Peninsula Terminal Company serves an important industrial area at Portland. Petitioner is desirous of assuring that traffic originating or terminating on the rails of Peninsula Terminal Company will flow freely and with-

out impediment or hindrance to and from all line-haul carriers serving Portland, including petitioner. Petitioner is also desirous of promoting and stimulating the industrial development of the area served by Peninsula Terminal Company, and has concluded that these objectives can be obtained only if it becomes an equal owner of Peninsula Terminal Company jointly with such other railroads as may be authorized by the Commission to participate in joint ownership, and therefore requests inclusion, pursuant to such terms and conditions as the Commission may establish.

IV

The request of Southern Pacific for inclusion is made pursuant to section 5(2)(d) of the Interstate Commerce Act, 49 U. S. C. § 5(2)(d). Consummation of the proposal of applicants herein without Southern Pacific's inclusion would be contrary to the public interest, and should be denied, whereas consummation of the transaction with Southern Pacific Company as an equal owner will be consistent with the public interest and should be approved.

V

Petitioner further requests that, as a condition to participation in ownership of Peninsula Terminal Company, applicants Union Pacific Railroad Company and Spokane, Portland & Seattle Railway Company be required to grant petitioner bridge trackage rights over applicant UP's main line and terminal trackage between Peninsula Terminal Company and the Southern Pacific-Union Pacific track connection at East Portland, Ore. In the event either or both of said applicants shall decline to participate in the acquisition of Peninsula Terminal Company subject to such

condition, then petitioner requests that the Commission enter its order pursuant to section 3(5) of the Interstate Commerce Act, 49 U.S.C. § 3(5), authorizing petitioner to use trackage of applicant UP as aforesaid. Such use of said trackage would not substantially impair UP or SP&S's ability to handle their own business, and would be in the public interest.

WHEREFORE, Southern Pacific Company prays that the Commission order its inclusion as an equal joint owner in Peninsula Terminal Company, and that applicants be required to grant Southern Pacific trackage rights between East Portland and the yards of Peninsula Terminal Company, both as a condition to participation in ownership of Peninsula Terminal Company, and also under section 3(5) of the Interstate Commerce Act, independently of the request for participation in ownership.

Dated at San Francisco, Calif., this 28th day of November, 1967.

Applications

PART I

APPLICATION OF SOUTHERN PACIFIC COMPANY UNDER SECTION 3(5) OF THE INTERSTATE COM- MERCE ACT FOR AN ORDER REQUIRING COM- MON USE OF THE TERMINAL FACILITIES OF THE PENINSULA TERMINAL COMPANY AND USE OF CERTAIN MAIN LINE TRACKS FOR A REA- SONABLE DISTANCE OUTSIDE OF SUCH TERMIN- AL.

Comes now Southern Pacific Company (Southern Pacific), applicant herein, and requests that the Commission enter an order pursuant to Section 3(5) of the Interstate Commerce Act requiring the common use of Peninsula Terminal Company, a "terminal facility" within the meaning of Section 3(5) of the Act, together with the necessary access over certain main-line trackage of the Union Pacific Railroad Company, and as grounds for such application states:

I

Southern Pacific is a Delaware corporation which owns and operates lines of railroad in the states of Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas and Louisiana. It is a common carrier by railroad subject to Part I of the Interstate Commerce Act.

II

Southern Pacific has served Portland, Oregon, directly and through predecessor companies, continuously for almost 100 years, and has been a substantial and integral part of the industrial and commercial community of Portland during that time.

III

By their application filed July 25, 1967, Spokane, Portland and Seattle Railway Company and Union Pacific Railroad Company (Union Pacific) seek authority under Section 5(2) of the Interstate Commerce Act to acquire control of Peninsula Terminal Company through ownership of all its outstanding capital stock. By its amended petition dated November 28, 1967, Southern Pacific Company intervened in Finance Docket No. 24679 requesting that, as a condition to the approval of the application in Finance Docket No. 24679, Southern Pacific Company be included as a joint owner of Peninsula Terminal Company, and be granted certain trackage rights over Union Pacific in order to reach said terminal facility.

IV

Because Peninsula Terminal Company serves an important Portland industrial area, Southern Pacific desires to assure the traffic originating or terminating on the rails of Peninsula Terminal Company will flow freely and efficiently to and from all line-haul carriers serving Portland, including applicant. Southern Pacific desires to participate in promotion of the industrial development of the important areas served by Peninsula Terminal Company, and has concluded that this objective can best be accomplished through an order permitting its common use of Peninsula Terminal Company.

V

Southern Pacific further requests in order to assure the most efficient rail service to the public to and from points on Peninsula Terminal Company, and to implement most effectively the proposed common use of Peninsula Terminal Company, that the Commission grant South-

ern Pacific bridge trackage rights over Union Pacific between Peninsula Terminal Company and Southern Pacific Union Pacific track connection at East Portland, Oregon, a distance of 6.75 miles. Such mileage is a "reasonable distance" outside of Peninsula Terminal Company within the meaning of Section 3(5).

VI

The proposed common use by Southern Pacific of the terminal facilities of Peninsula Terminal Company, and the proposed trackage rights over 6.75 miles of Union Pacific trackage outside of the terminal area, would be practicable and in the public interest and would not substantially impair the ability of either Peninsula Terminal Company or Union Pacific to handle its own business.

PART II

APPLICATION OF SOUTHERN PACIFIC COMPANY
UNDER SECTION 3(5) OF THE INTERSTATE COM-
MERCE ACT FOR AN ORDER REQUIRING COM-
MON USE OF CERTAIN TERMINAL FACILITIES
OF UNION PACIFIC RAILROAD COMPANY AT
PORTLAND, OREGON

Comes now Southern Pacific Company (Southern Pacific), applicant herein, and requests that the Commission enter an order pursuant to Section 3(5) of the Interstate Commerce Act requiring the common use of the Union Pacific trackage between Peninsula Terminal Company and the Southern Pacific-Union Pacific connection at East Portland Oregon, a distance of 6.75 miles, and as grounds for such application states:

I

Southern Pacific repeats the allegations contained in paragraphs I, II and III of PART I of the Application herein, and incorporates the same by reference as if set forth in full.

II

The properties of Union Pacific with respect to which common use is sought are "terminal facilities" within the meaning of Section 3(5) of the Act, and provide direct access to an important and developing industrial area of Portland, which area is presently served by Peninsula Terminal Company. Such common use by Southern Pacific would be practicable and in the public interest, and would not substantially impair the ability of Union Pacific to handle its own traffic.

WHEREFORE, Southern Pacific prays that the Commission enter an order pursuant to Section 3(5) requiring:

(1) The common use of Peninsula Terminal Company, together with bridge trackage rights over Union Pacific between Peninsula Terminal Company and the Southern Pacific-Union Pacific connection at East Portland, Oregon;

(2) The common use of the terminal facilities of Union Pacific between Peninsula Terminal Company and the Southern Pacific-Union Pacific connection at East Portland, Oregon.

Southern Pacific further prays that this application be consolidated for hearing with Finance Docket No. 24679, application of Union Pacific and Spokane, Portland and Seattle Railway Company under Section 5(2) for stock control of Peninsula Terminal Company; that the date of January 15, 1968 presently scheduled for the hearing of Finance Docket No. 24679 be canceled; and that consolidated hearing of this matter be held not sooner than March 1, 1968, in order to permit Southern Pacific to prepare evidence in support of its applications herein.

REPLY OF APPLICANT SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY TO PETITION OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, REQUESTING INCLUSION AND TRackage RIGHTS.

Comes now applicant, Spokane, Portland & Seattle Railway Company, hereinafter called SP&S, and replies to the petition of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the Milwaukee, requesting inclusion in the transaction covered by the above entitled application and further requesting an order directing that the Milwaukee be permitted to purchase an interest in the North Portland interchange tracks and states as follows:

I.

The Milwaukee has requested that it be granted trackage rights in the North Portland interchange tracks jointly owned by SP&S, Northern Pacific Railway Company, hereinafter called Northern Pacific, Union Pacific and Peninsula Terminal Company, hereinafter called Peninsula, which are likewise used under contractual arrangement by the Great Northern Railway Company, hereinafter called Great Northern. Said interchange tracks are presently used for the purpose of interchanging traffic between Peninsula on the one hand and the aforesaid rail carriers on the other. In addition, these tracks serve as a important interchange point between the SP&S-Great Northern-Northern Pacific on the one hand and Union Pacific on the other with approximately two-thirds of all traffic interchanged in the latter category. Applicant denies that granting of trackage rights or joint ownership of said North Portland interchange tracks is in the public interest, and further denies that the Milwaukee may lawfully be granted such rights in the instant proceeding.

II.


The Milwaukee also requests that it be authorized to purchase one-third interest in the outstanding stock of Peninsula simultaneously with the stock purchase of the SP&S and Union Pacific. SP&S denies that the inclusion of the Milwaukee in the purchase of the stock ownership of Peninsula would be in furtherance of the public interest.

III.

Some language in the Milwaukee's said petition indicates that it also desires trackage rights over the tracks of the Peninsula. SP&S and Union Pacific have not by their petitions asked for such rights, and the SP&S denies that there is any need for the Milwaukee to have trackage rights over Peninsula's tracks.

WHEREFORE, the SP&S prays that the Commission deny the Milwaukee's petition in its entirety.

Dated at Portland, Oregon, this 27th day of December, 1967.



REPLY TO PETITION FOR INCLUSION OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY.

Comes now applicant Union Pacific Railroad Company (Union Pacific) and replies to the petition for inclusion of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee), filed herein pursuant to Rule 1.102, and requests that the relief sought in said petition be denied and, further, that the Commission determine that Milwaukee has no standing to appear in this proceeding as a railroad in the territory because it is not now "another railroad : . . in the territory involved" as the term is used in Section 5(2)(d) of the Interstate Commerce Act.

I

Spokane, Portland & Seattle Railway Company (SP&S) and Union Pacific, hereinafter referred to collectively as "applicants", operate as common carrier railroads in various states including Oregon and physically connect with Peninsula Terminal Company (Peninsula) at North Portland, Oregon.

II.

Lines of Milwaukee presently terminate, in the Pacific Northwest, on the Lower Columbia River at Longview, Washington, some 46 miles north of Portland.

III

The recent Commission decision in Finance Docket No. 24178 *et al.*, *Great Northern Pacific & B. Lines, etc.* (November 30, 1967) 331 ICC 228, does not give Milwaukee automatic access to Portland. Many requests for reconsideration and appeals could postpone any access of Mil-

waukee for many years. Furthermore, it is likely that Milwaukee will be required to file and successfully progress separate applications under Section 1(18) or 5(2) before it can gain final approval for access over the Northern Pacific-SP&S trackage. This would entail the assumption by the Milwaukee of the burden of proving public convenience and necessity or consistency with the public interest. Union Pacific contends that Milwaukee must successfully complete one of these courses of action before it can take advantage of Condition 2 in the "Northern Lines" merger and be considered a railroad anywhere near the territory involved in the instant proceeding.

IV

Assuming that Milwaukee is at some future time successful in gaining access to Portland over the Northern Pacific-SP&S line, it would still not connect with Peninsula trackage because of the intervening North Portland interchange track, jointly owned by SP&S-NP, Union Pacific and Peninsula, which physically separates the NP-SP&S Main Line from Peninsula trackage. The North Portland interchange track not only connects the Union Pacific and NP-SP&S Main Lines with Peninsula but also serves as an important interchange point between the SP&S-Great Northern on the one hand and Union Pacific on the other. Milwaukee recognizes the need for access across the North Portland interchange track as it has asked for trackage rights over "the intervening connecting trackage jointly owned by applicants . . ."

V

This relief cannot be granted in this proceeding because the relief involves the filing of a separate application for trackage rights with distinct burdens of proof, pursuant

to Sections 1(18), 3(5) or 5(2) of the Act. Because of this, applicants are unduly burdened in resisting this improper request which substantially broadens the issues in the instant proceeding. Milwaukee will suffer no burden in making the proper application for access over the tracks involved if it ever obtains running rights into Portland.

VI

Applicants oppose Milwaukee's petition for inclusion as an owner of Peninsula's stock and for trackage rights. Peninsula is a small railroad with less than 4 miles of track and serves 12 to 15 industries. Applicants have served the North Portland area in conjunction with Peninsula since 1906 and the interjection of Milwaukee, which has never served this area, as an owner of Peninsula could destroy the historic working relationship as it now exists and thereby lead to a cumbersome, confused and divided management with resulting policy stalemates and serious deterioration of service. Milwaukee service is now available to Peninsula industries as a connecting carrier, and this will be continued through maintenance of all routes and channels of trade via existing junctions and gateways.

VII

Because Milwaukee must have trackage rights over the NP-SP&S Main Line as well as intervening connecting tracks before it can physically connect with Peninsula, and the obvious inability of the Commission to grant in this proceeding relief sought under Milwaukee's maverick petition for inclusion filed pursuant to Rule 1.102, Union Pacific respectfully requests that said petition be denied in total and that the Commission determine that the Milwaukee has no standing to appear as "a railroad in the territory involved" as defined in Section 5(2)(d) of the Act.

WHEREFORE, Union Pacific prays that the Commission enter an order finding that the Milwaukee has no standing in this proceeding to obtain any relief sought by it in its petition and, further, denying Milwaukee's petition in its entirety.

Dated at Portland, Oregon, this 27th day of December, 1967.

SUPPLEMENT TO PETITION FOR INCLUSION OF
CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY.

By petition dated August 22, 1967, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as "the Milwaukee") petitioned, as a railroad in the territory involved in the transaction, for inclusion in the above-captioned transaction on an equal basis with applicants, and for trackage rights over intervening connecting trackage jointly owned by applicants extending from the main line of present Spokane, Portland and Seattle Railway Company (SP&S) to Peninsula Terminal Company's lines, upon such reasonable terms and conditions and for such consideration as Milwaukee and applicants may negotiate, or, failing such negotiations, upon such terms and conditions and for such consideration as the Commission may find just and reasonable. In its prayer the Milwaukee requested that the Commission enter an order granting this petition, and that unless applicants stipulate with Milwaukee for its inclusion in the instant transaction on an equal basis, the said application be set for public hearing at Portland, Oregon. In the interim no such stipulation with Milwaukee has been forth-

coming from applicants, and by separate replies dated December 27, 1967, respectively, applicants SP&S and Union Pacific pray that the Milwaukee's petition be denied in its entirety. By way of supplement to its said petition for inclusion, the Milwaukee states as follows.

I.

The Milwaukee in support of its petition for inclusion in the above-entitled transaction, cited the proposed consolidation of Great Northern, Northern Pacific Coast and Chicago, Burlington & Quincy Railroads into a new company known as "Great Northern Pacific & Burlington Lines, Inc." and the lease by the new company of the properties and assets of the SP&S then pending before the Commission in F. D. 21478, *et al.*, sometimes known as the "Northern Lines Merger." Subsequent to filing of said petition for inclusion, the Commission by its report and order on reconsideration and further hearing decided November 30, 1967 and served December 15, 1967 in F. D. 21478, *et al.* (331 I. C. C. 228) authorized the transactions proposed in said dockets, subject to conditions set forth in Appendix L, specifically Condition 24 thereof, which report and order, by reference are made a part of this Supplement to Milwaukee Petition for Inclusion herein.

II.

The applicants in said Finance Docket No. 21478, *et al.*, have publicly announced their intention to consummate the said transactions as approved and authorized by the Commission and upon or before the effective date of said order of the Commission therein the Milwaukee will file application or applications needed to implement said condition 24; that these procedural steps and the time re-

quired to complete them do not impair the Commission's jurisdiction in this case with respect to the Milwaukee's petition herein or its obligation to protect the Milwaukee's interest and the public interest.

III.

That in light of the replies of applicants herein to the Milwaukee's petition for inclusion, the Milwaukee alleges that the joint application herein is for the purpose of bottling up the Milwaukee at Portland and impair its ability to provide a competitive service to industries served or to be served by Peninsula Terminal Company contrary to the public interest and the plain intent of the Commission's said report and order in F. D. No. 21478

IV.

Oregon-Washington Railroad & Navigation Company (OWR&N) is wholly owned by Union Pacific and insofar as involved here, its properties and franchises are leased to and operated by Union Pacific. That upon its extension to Portland, the Milwaukee will operate over the present main line of SP&S at North Portland, Oregon

V.

The intervening trackage between the Peninsula Terminal Company trackage and the SP&S main line, known as North Portland interchange tracks, is shown on map marked "Exhibit No. 6" attached to the application in the instant proceedings, by purple and by yellow lines. Tracks shown in purple are jointly owned by SP&S, NP and the OWR&N and tracks shown in yellow are jointly owned by SP&S, NP, OWR&N and Peninsula Terminal Company. These tracks are also used by Great Northern under contract. The trackage of the Peninsula Terminal Company

and the connecting trackage mentioned are located within the terminal area of the city of Portland, Oregon, which the Milwaukee will serve pursuant to said Condition 24, are "terminal facilities" within the purview of Section 3(5) of the Act and, as such, fall within the Commission's jurisdiction under Section 3(5) of the Interstate Commerce Act, 49 U. S. C. Sec. 3(5). On consummation of the said Northern Lines consolidation and lease of the SP&S trackage, trackage not owned in whole or in part by Peninsula will be owned jointly by SP&S, Union Pacific, and the Great Northern Pacific & Burlington Lines, Inc., and operated by the latter two companies.

VI.

That joint use of said intervening trackage would not substantially impair the ability of either Union Pacific, Great Northern Pacific & Burlington Lines, Inc., or Peninsula Terminal Company to handle their own business, and would be in the public interest.

WHEREFORE, Milwaukee prays:

1. That the Commission enter an order granting its petition for inclusion herein as hereinabove supplemented.
2. That applicants be required to grant Milwaukee trackage rights over intervening trackage at North Portland connecting with the yards of Peninsula Terminal Company, both as a condition to participation in ownership of Peninsula Terminal Company and also under Section 3(5) of the Interstate Commerce Act.
3. That the Commission order such other and further relief for Milwaukee as may be meet.

Dated at Chicago, Illinois, this 26th day of January, 1968.

PETITION OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY FOR
ISSUANCE OF SUBPOENAS *DUCES TECUM*

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, sometimes referred to as "the Milwaukee Road", heretofore filed in this proceeding and served upon the parties its petition for inclusion, dated August 22, 1967. Separate Replies of applicants, Union Pacific Railroad Company ("Union Pacific") and Spokane, Portland, & Seattle Railway Company ("SP&S") to the Milwaukee Road's petition for inclusion, both dated December 27, 1967, were received by the Milwaukee Road December 28, 1967, praying that said petition for inclusion be denied in its entirety.

In the Milwaukee Road's petition for inclusion it prayed *inter alia* that unless applicants herein stipulate with the Milwaukee that its inclusion in the instant transaction be allowed on an equal basis, the instant application be set for public hearing for the purpose of receiving evidence in support of the Milwaukee Road's petition for inclusion. No such stipulation has been forthcoming and now by their respective replies applicants have made it clear that they oppose this petition and seek to have it denied. Despite the Commission's recent decision in Finance Docket No. 21478, *et al*, *Great Northern Pacific & B. Lines, etc.* (Nov. 30, 1967), 331 ICC 228, it is contended that the Milwaukee Road does not have automatic access to Portland and, even if so, does not have access over connecting tracks at North Portland lying between present SP&S main line and Peninsula Terminal Company ("Peninsula") and requires a separate application.

In view of these contentions, a supplement to the Milwaukee Road's petition for inclusion has been filed herein and served upon the parties.

On information and belief, the Milwaukee Road views the joint application of Union Pacific and SP&S control of Peninsula as an attempt to keep the Milwaukee Road out of the industrial area served by Peninsula and the new Rivergate Industrial District being developed by the Port of Portland which is reached from the northeast side by the tracks of Peninsula. The documents, correspondence and memoranda sought through the respective subpoenas requested herein will tend to show, *inter alia* that by its present ownership of the trackage extending from North Portland Junction to Barnes Yard and thence to Rivergate Industrial District's southern boundaries, the applicant, Union Pacific, having heretofore granted certain trackage rights to SP&S, Great Northern Railway Company ("Great Northern") and Northern Pacific Railway Company ("Northern Pacific") to and through Barnes Yard to serve the Rivergate District, now jointly with these latter parties as applicants or beneficial owners of SP&S control access to this new industrial area from the south and that by its proposed joint control of Peninsula and ownership of connecting tracks from the present SP&S main line to Peninsula tracks (the North Portland interchange tracks) can also prevent the Milwaukee Road (upon its operation into Portland pursuant to its Portland condition imposed in Finance Docket No. 21478) from obtaining ready access to industries located on the Peninsula and in the Rivergate Industrial District from the north side via North Portland. It is, therefore, necessary to know what contractual arrangements exist between Union Pacific on the one hand and the SP&S or the Northern Pacific and Great Northern on the other regarding track-

age to and from Peninsula and to and from the Rivergate Industrial District, and between Peninsula and SP&S., Northern Pacific, Great Northern, or Union Pacific.

The Milwaukee Road has reason to believe that the original negotiations with United Stock Yards Corporation for purchase of the assets or stock control of Peninsula commenced during a period of five years immediately preceding the filing of the joint application herein and were conducted by SP&S., or its parent companies, Great Northern and Northern Pacific, and that the decision to include Union Pacific as a joint owner is a recent development generated by the correspondence, Memoranda and proceedings in Finance Docket No. 21478.

WHEREFORE, the Milwaukee Road, pursuant to the Commission's General Rules of Practice, Section 1.56, prays that the Commission issue the following subpoenas *duces tecum*:

1. A subpoena directed to E. H. Bailey, President, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, Nebraska, requiring him or his authorized representative to appear at the initial hearing in the above-entitled application and produce for inspection by the parties and for copying therefrom for introduction in evidence in accordance with appropriate rules of evidence, the following documents of true copies thereof:

- a. All current contracts and supplements or amendments thereto, between Union Pacific, or its subsidiary and lessor, Oregon-Washington Railroad & Navigation Company ("OWR&N") and Northern Pacific, Great Northern, or SP&S covering Union Pacific's use and operation of trackage of Northern Pacific and SP&S between Longview Junction, Washington, and Portland, Oregon;

b. All current contracts and supplements and amendments thereto, between Union Pacific, or its lessor, OWR&N, and Peninsula, SP&S., Great Northern, or Northern Pacific, relating to interchange tracks and connecting tracks at North Portland or North Portland Junction, Oregon, including but not limited to that certain agreement of August 31, 1938 between Peninsula, OWR&N and SP&S;

c. All current contracts and supplements and amendments thereto, between Union Pacific, or its subsidiary and lessor, OWR&N, and SP&S, Great Northern or Northern Pacific, relating to (1) trackage of Union Pacific or its lessor, OWR&N, extending from SP&S main line at North Portland Junction, Oregon, to Barnes Yard in Portland, Oregon, (2) trackage at Barnes Yard, and (3) trackage between Barnes Yard and Terminal No. 4, and Rivergate Industrial District, including but not limited to that certain contract dated October 6, 1921, between OWR&N or its lessee, Union Pacific, and the SP&S., Northern Pacific, and Great Northern, and any memoranda of understanding relating to such trackage where no formal contracts have been finalized;

d. All executive department, traffic department, engineering department and operating department reports, correspondence and memoranda possessed by Union Pacific and located in the General Offices of the company at Omaha or Portland, Oregon, relating in any manner to or connected with the proposed transaction covered by the above-entitled application, including but not limited to correspondence between Union Pacific and SP&S., Northern Pacific or Great Northern, and between Union Pacific and Peninsula

or Union Stock Yards Corporation or its present company, if any, and including company memoranda and inter-office correspondence of Union Pacific located at said general offices.

2. A subpoena directed to John M. Budd, President, Great Northern Railway Company, 175 East Fourth Street, St. Paul, Minnesota, as President of Great Northern and of SP&S (alternating with L. W. Menk, requiring him or his authorized representative to appear at the initial hearing in the above-entitled application and produce for inspection by the parties and for copying therefrom for introduction in evidence in accordance with appropriate rules of evidence, the following documents or true copies thereof:

a. All current contracts and supplements and amendments thereto, between SP&S, OWR&N., its parent company and lessee, Union Pacific, Northern Pacific or Great Northern, covering joint use and operation of SP&S line between Vancouver, Washington, and Portland, Oregon;

b. All current contracts and supplements and amendments thereto, between SP&S or Great Northern and Northern Pacific, Peninsula, or OWR&N or its lessee, Union Pacific, relating to interchange tracks and connecting tracks at North Portland or North Portland Junction, Oregon, including but not limited to that certain agreement of August 31, 1938, between Peninsula, OWR&N UP, and SP&S;

c. All current contracts and supplements and amendments thereto, between SP&S or Great Northern and Union Pacific or its lessor and subsidiary, OWR&N, relating to SP&S connecting tracks at Barnes Yard, Portland, Oregon, and trackage of Union Pacific at Barnes Yard, and extending from Barnes

Yard to Terminal No. 4 and to Rivergate Industrial District, including but not limited to that certain contract, dated October 6, 1921, between SP&S and OWR&N or its lessee, Union Pacific, and including any memoranda or letters of understanding relating to such trackage where no formal contracts have been finalized;

d. All executive department, traffic department and engineering and operating department reports, correspondence and memoranda possessed by SP&S at its general offices at Portland, Oregon, or by Great Northern, as joint owner of SP&S, at its general offices at St. Paul, Minnesota, or Seattle, Washington, relating in any manner to or connected with the proposed transaction covered by the above-entitled application, including but not limited to correspondence between SP&S or Great Northern and Union Pacific; Great Northern and SP&S; Great Northern and Northern Pacific; SP&S and Northern Pacific; SP&S or Great Northern and Peninsula or its parent Company, United Stock Yards, or its parent company, if any, and including company and inter-office correspondence and memoranda of SP&S and of Great Northern located at said general offices.

3. A subpoena directed to L. W. Menk, President, Northern Pacific Railway Company, 176 East 5th. Street, St. Paul, Minnesota, as president of Northern Pacific Railway Company and of SP&S. (alternating with John M. Budd), requiring him or his authorized representative to appear at the initial hearing in the above-entitled application and produce for inspection by the parties and for copying therefrom for introduction into evidence in accordance with appropriate rules of evidence, the following documents or true copies thereof:

a. All current contracts and supplements and amendments thereto, between SP&S or Northern Pacific and Great Northern, OWR&N, or its lessee, Union Pacific, covering the joint use and operation of Northern Pacific's line between Longview Junction, Washington, and Vancouver, Washington, and between Vancouver, Washington, and Portland, Oregon;

b. All current contracts and supplements and amendments thereto, between SP&S or Northern Pacific and Great Northern, Peninsula or OWR&N, or its lessee, Union Pacific, relating to interchange tracks and connecting tracks at North Portland or North Portland Junction, Oregon, including but not limited to that certain agreement of August 31, 1938 between Peninsula, OWR&N, UP, and SP&S;

c. All current contracts and supplements or amendments thereto between Northern Pacific SP&S, Great Northern, Union Pacific, or its lessor and subsidiary, OWR&N, relating to SP&S connecting tracks to Barnes Yard, Portland, Oregon, and to trackage of Union Pacific at Barnes Yard, and from Barnes Yard to Terminal No. 4 and Rivergate Industrial District, including but not limited to that certain contract dated October 6, 1921, between SP&S and OWR&N, or its lessee, Union Pacific, and including any memoranda or letters of understanding relating to such trackage where no formal contract has been finalized;

d. All executive department, traffic department, engineering and operating department reports, correspondence and memoranda possessed by SP&S at its general offices at Portland, Oregon, or by Northern Pacific, as joint owner of SP&S, at its general offices

at St. Paul, Minnesota, or Seattle, Washington, relating in any manner or connected with the proposed transaction covered by the above-entitled application, including but not limited to correspondence between SP&S or Northern Pacific and Union Pacific, Northern Pacific and SP&S, between Northern Pacific and Great Northern, between SP&S and Great Northern, between SP&S or Northern Pacific and Peninsula or its parent company, United Stock Yards, or its parent company, if any, and including company and inter-office correspondence and memoranda of SP&S and of Northern Pacific located at said general offices.

* * *

REPLY TO SUPPLEMENT TO PETITION FOR INCLUSION AND PETITION FOR ISSUANCE OF SUBPOENAS DUCES TECUM FILED BY CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

Comes now, Union Pacific Railroad Company (Union Pacific) and Spokane, Portland & Seattle Railway Company (SP&S), hereinafter referred to as "applicants," and reply to the Supplement to Petition and Petition for Issuance of Subpoenas *Duces Tecum* filed in this case by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee) as follows:

I

In reply to Milwaukee's Supplement to Petition for Inclusion, applicants reiterate their opposition stated in their replies filed with the Commission on December 29, 1967.

II

In further reply to Milwaukee's Supplement to Petition for Inclusion, applicant Union Pacific points to the inadequate basis for Milwaukee's contention that the Commission must protect interests which it hopes to gain in Finance Docket No. 21478 *et al.* While applicants in Finance Docket 21478 *et al.* have publically announced their intention to consummate said transaction as soon as possible, the Commission has by its order dated January 15, 1968 postponed the time within which the merger may be consummated. Numerous unresolved petitions for reconsideration are pending, including one by Milwaukee and one by applicant Union Pacific. The position of Milwaukee in apparently claiming to be a railroad in the territory under Section 5 (2) (d) of the Act is based wholly upon a condition in a postponed merger on which petitions for reconsideration are pending. Such a position is untenable.

III.

Milwaukee's contention that the joint application for acquisition of Peninsula Terminal (Peninsula) in Finance Docket No. 24679 "... is for the purpose of bottling up Milwaukee at Portland and impair its ability to provide a competitive service to industries served by ..." Peninsula presents an issue far beyond any properly before the Commission in this proceeding. These allegations fly in the face of the representation of applicants that all routes and channels of trade by existing junctions and gateways will be maintained. (See application F. D. 24679, p. 21). This representation of applicants is the only sensible one that could be made in light of the current status of Milwaukee in its entry to Portland. Milwaukee now serves Portland as a connecting carrier with

many through routes and joint rates by applicant lines and the parent lines of SP&S. If Milwaukee gains access to Portland under Condition No. 24 in Finance Docket No. 21478 *et al.* and thereafter wishes to connect directly with Peninsula over the North Portland interchange track, then Milwaukee should at that time proceed independently by application to acquire common usage rights. As applicants have heretofore alleged, such usage should not be granted as part of Finance Docket No. 24679.

Both Northern Pacific Railway Company (Northern Pacific) and Peninsula own interests in the trackage over which Milwaukee seeks rights by its supplemental petition. Neither is a party to the application in Finance Docket No. 24679.

IV

As to Milwaukee's Petition for Issuance of Subpoenas *Duces Tecum*, your applicants oppose granting of said subpoenas for any of the documents requested on the grounds that the documents requested bear no relevance and are immaterial to the issues framed in Finance Docket No. 24679. Furthermore, the request for subpoenas interject matters into this proceeding which unduly broaden the issues. (See *Gulf, M. & O. R. Co.—Purchase—Securities* (1946) 267 ICC 265, 270, and *Wabash R. Co.—Control* (1941) 247 ICC 365, 374.)

V

The contracts and supplements requested by Milwaukee relating to trackage rights between Longview Junction, Washington, and Portland, Oregon, are part and parcel of the issues in the "northern lines" merger, Finance Docket No. 21478 *et al.*, and have absolutely no bearing on the application for acquisition of Peninsula. Peninsula

itself does not connect with said trackage, being separated by .8 mile of intervening interchange yard at Portland. These documents could not be used in any way to support Milwaukee's Petition for Inclusion or for usage of terminal facilities under a proper Section 3 (5) application and would unduly broaden the issues and burden applicants and the Commission with irrelevant and immaterial evidence.

VI

Contracts and supplements covering interchange tracks and connecting tracks at North Portland or North Portland Junction have no relevance to Milwaukee's request for inclusion until Milwaukee commences to operate trains along the Northern Pacific-SP&S Main Line under Condition No. 24 of the "northern lines" merger.

If Milwaukee, being successful in reaching Portland, were to proceed properly by an independent application under Section 3 (5) to acquire the right to connect directly with Peninsula over the North Portland interchange and if Milwaukee were successful in that effort, then under the statute the owners of that trackage and Milwaukee would be required to attempt to negotiate an agreement covering the use of that trackage by Milwaukee. Only if the parties were unsuccessful in those efforts, would the Commission have a right under the statute to fix the terms for the use of trackage, and only in that event would these contracts and memoranda which Milwaukee is attempting to subpoena be relevant.

VII

Contracts, supplements and amendments thereto concerning trackage between North Portland and Barnes Yard, within Barnes Yard itself and between Barnes Yard and

Terminal No. 4 and also Rivergate Industrial District, including memoranda of understandings involving these, are not only immaterial to this proceeding but tend to interject imagined "botting up" issues far beyond the scope of the application. The trackage covered by this portion of Milwaukee's request serves areas many miles from Peninsula industries. Peninsula has no right to use said trackage and none is being sought by it in this proceeding. If allowed, Milwaukee's request would open areas of evidence far afield from the issues in this case causing unnecessary delays.

VIII

Milwaukee's request for Executive Department, Traffic Department, Engineering Department and Operating Department reports, correspondence and memoranda related to the application in Finance Docket No. 24679 has no relevance or materiality to Milwaukee's request for inclusion. Milwaukee is embarking on a fishing expedition which could prolong this proceeding and serve no useful purpose. If Milwaukee is successful in its effort to acquire equal ownership in Peninsula, it will then in effect become a party to the contract between the applicants and Peninsula, and prior negotiations leading up to that contract will have no bearing.

WHEREFORE, applicants pray:

- (1) That the Commission enter its order denying relief sought by Milwaukee in its Petition for Inclusion as supplemented, and
- (2) That the Commission deny The Petition for Issuance of Subpoenas *Duces Tecum*.

* * *

SERVICE DATE
FEBRUARY 23, 1968

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 13th day of February, 1968.

Finance Docket No. 24679¹

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY—CONTROL—PENINSULA TERMINAL COMPANY

Upon consideration of the record of the above-entitled proceedings; the joint petition of Spokane, Portland & Seattle Railway Company and Union Pacific Railroad Company (applicants), filed January 29, 1968, for reconsideration of order of the Commission dated January 5, 1968; the petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), filed January 29, 1968, for subpoenas *duces tecum*; the petition of Crown Zellerbach Corporation for leave to intervene in these proceedings; and the joint reply thereto by applicants, filed January 29, 1968; and

It appearing, That by order dated January 5, 1968, the Commission, Commissioner Tuggle, directed that the matters in Finance Docket Nos. 24890 and 24891 be heard on a common record with the title proceeding;

¹ This order also embraces Finance Docket No. 24890, Southern Pacific Co.—Common Use of Terminal Facilities—Peninsula Terminal Co., and Finance Docket No. 24891, Southern Pacific Co.—Common Use of Certain Terminal Facilities—Union Pacific Co.

It further appearing, That the petition of applicants for reconsideration is without merit, in that orderly procedure requires that these matters be heard on a common record, in order to provide a more thorough consideration and better assessment of the issues involved;

It further appearing, That the petition of Milwaukee for subpoenas *duces tecum* is without merit, as the relevancy and need of the matters sought to be produced have not been established;

And it further appearing, That the petition of Crown Zellerbach Corporation for leave to intervene is pertinent to the issues already presented and would not unduly broaden them; and for good cause:

F. D. No. 24679 *et al.*

It is ordered, That the petition for reconsideration filed by the applicants and the petition for the issuance of subpoenas *duces tecum* filed by the Milwaukee, be, and they are hereby, denied, for the reason that sufficient grounds have not been shown to warrant the action sought.

And it is further ordered, That the Crown Zellerbach Corporation be, and it is hereby, permitted to intervene and be treated as a party to these proceedings, provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to unduly broaden the issues raised in these proceedings.

By the Commission, Division 3, acting as an Appellate Division.

H. Neil Garson,
Secretary.

(SEAL)

HEARING EXHIBITS AND EXCERPTS FROM TESTIMONY.

EXHIBIT 1

STATEMENT OF E. GROSVENOR PLOWMAN.

My name is E. Grosvenor Plowman. My office is at 48 Partridge Circle, Portland, Maine, 04102. I am a consultant specializing in the business logistics of freight movements. I appear in these proceedings on behalf of The Port of Portland Commission, a government agency created in 1891 by the State of Oregon.

In this statement, I consider public interest aspects of several proceedings involving the acquisition of control of Peninsula Terminal Company (Peninsula Terminal), a switching railroad reaching the Rivergate area in the North Portland Peninsula in The Port of Portland district. Four railroads are directly involved: Union Pacific Railroad Company (Union Pacific or UP), Spokane, Portland and Seattle Railway Company (SP&S), Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee) and Southern Pacific Company (Southern Pacific or SP). Also involved are Great Northern Railway Company (GN) and Northern Pacific Railway Company (NP) which own SP&S. Hereafter, I shall sometimes refer to SP&S, GN and NP as the SP&S Group or the Northern Lines.

For convenience in this statement, I shall refer to other railroads by the commonly used abbreviations or short names.

. . .

2. *Background; Basic Considerations*

Portland is a leading transportation and economic center and a major distribution point in the Pacific Northwest. It is a seaport of major importance to the Nation. Its access to the ocean is via a deep draft sea channel progressively deepened over a period of 75 years with funds provided by the Federal Government and The Port of Portland. The Commission of Public Docks of the City of Portland (Dock Commission), created in 1910, has developed extensive public terminal facilities accommodating ocean vessels and river barges moving on the Columbia and Willamette River systems. For over a century, Portland has been growing as a transport and trade center. An essential of its present progress and future growth for the benefit of the Nation and the Northwest is the development of the Rivergate area.

Rivergate is still in its initial development stage. Today the area is chiefly marsh and floodland and unsuited for industrial, commercial or waterfront uses. Its level must be raised by means of fill materials dredged from the river. Completion of dredging and filling can be 5, 10 or 15 years in the future, depending on the need to create "made land" in advance of the market demand.

Rivergate's land will be relatively high cost because of the filling operation. This is offset by its strategic asset of location adjacent to almost six miles of waterfront on the 40-foot navigation channels of the lower Willamette and the Columbia Rivers. This location fact will encourage efforts to find buyers who are water-oriented, that is, who use ocean or up-river barge transportation for some shipments and rail or truck transportation for other cargo and/or who interchange freight between these modes. Effective use of this location advantage will require maxi-

mum automation of ship and/or barge discharge and loading, as well as automated transfer to and from rail or truck and water.

Rivergate is a land area in excess of four square miles at the confluence of the Willamette and Columbia Rivers. It is owned and is being developed by a government agency, The Port of Portland. Its dredging operation is the source of the fill material that is creating this usable land area. Because it is new land thus created, Rivergate today has no railroad tracks, no highways, no waterfront facilities, no utilities, no industrial or commercial buildings, other than at or near its land-side boundary. Rivergate's interest is in the adequacy of its 1970 and 1980 and 1990 facilities for ocean vessels and barges, and for trucks and freight cars. This primary requirement will be greatly aided or impaired by today's decisions, for example, as to how Oregon Steel's plant is to be served by rail and truck and as to how Crown Zellerbach's pole yard is to be served by barge or rail.

Rivergate today has five industrial activities within its boundaries, together occupying 265 acres, or less than one-tenth of the ultimately available area. These are Ashgrove Lime and Portland Cement Company, Conmetco Division of Consolidated Freightways, Collier Carbon and Chemical Company, and Oregon Steel Mills on the Willamette in the southeast corner of Rivergate, and the Crown Zellerbach pole yard located on the Columbia River in the northeast corner of Rivergate. Crown Zellerbach is the only industry within Rivergate now served by Peninsula Terminal. However, Peninsula Terminal does not own any tracks within Rivergate. It uses the private industry tracks owned by Crown Zellerbach for its service to this industry.

In the southeast corner, railroad service is presently performed over tracks of varied ownership. As I understand the situation, UP owns Barnes Yard and has granted the SP&S Group operating rights to bring to and remove from this yard their SP&S trains containing cars destined to or originating from present Rivergate industries. UP and SP&S have jointly constructed and own a track from this Barnes Yard to the Rivergate property line. The Port of Portland has built a connecting track within its property from the end of this UP-SP&S track to the property lines of the present industries. These industries have built their own connecting industry tracks.

The position of The Port of Portland, as introduced by witness Dirker in this proceeding, is that Rivergate desires and needs rail service at competitive rates and, as between carriers, equal operating conditions of access to Rivergate by all the linehaul railroads that now or in the future may reach Portland. The Port has a similar policy of equal and efficient access to Rivergate by all barge operators and ocean vessel operators serving Portland. The Port has intervened in this present proceeding in order to present Rivergate's need for service via Peninsula Terminal to be provided on equal terms by all the present and future linehaul railroads serving Portland. This necessary equality of access requires joint ownership of Peninsula Terminal by the SP&S Group and by Milwaukee, SP and UP. The Port recognizes that access by Milwaukee depends on completion of the pending merger of the SP&S Group into Great Northern Pacific & Burlington Railroad. My testimony is in support of this policy position of The Port of Portland.

The Port is aware of the potential inherent in fullest possible mechanization of cargo handling at dockside and

to or from surface modes of transportation, particularly truck and rail. The major role in Rivergate of the linehaul railroads serving Rivergate will be the mass production of transportation. By this I mean that railroad terminal operations within Rivergate must facilitate mechanized and rapid handling of liquid bulk products, dry bulk products and merchandise-type or general cargo-type freight in containers or other unitized forms. Joint ownership of Peninsula Terminal by all of Portland's linehaul railroads is a first step towards providing Rivergate with efficient railroad-type mass transportation.

On June 20, 1967, the Portland Railroad Conference was convened. It was attended by Governor Tom McCall of Oregon, representatives of the City, the Port and the Dock Commission, and the Presidents of UP SP, Milwaukee, GN and NP and the Vice President of SP&S. The principal subject was the rail switching situation in Portland with particular reference to Rivergate. The result was a commitment by the railroads to establish a single basis of switching charges and to absorb those charges within the linehaul rates under certain conditions. The commitment has not been finalized as yet. Its effective implementation is vital to the future of Rivergate.

The switching situation is of critical importance to Rivergate in planning and achieving both its near-term and long-range goals. In the following sections, I consider the transportation position of Portland and Rivergate in general and the rail transport needs of Rivergate in particular.

I have prepared a diagrammatic map exhibit to serve as basis for my explanation of the important aspects of Rivergate's present and future transportation needs. This map, my Exhibit No. 3, shows that Rivergate's present railroad service consists of minor, very short extensions of railroad

track into the Rivergate area. No railroad trackage exists in over 80 percent of Rivergate, because the land does not yet have either industrial or commercial value. It is marsh land or land subject to relatively severe annual flooding.

Exhibit No. 3 shows that the southeast corner of Rivergate is now served by UP and SP&S Group, with the actual switching performed by UP. The northeast corner of Rivergate is served by Peninsula Terminal. This switching carrier interchanges at North Portland with UP and with the SP&S Group. It follows, therefore, that the small southeast and northeast portions of Rivergate are now served by the same two linehaul carriers, namely, UP and SP&S. In the southeast corner, UP serves as the switching carrier to and from its Barnes Yard. In the northeast corner, Peninsula Terminal serves as the switching carrier.

Exhibit No. 3 also shows that SP does not at present reach Rivergate. The nearest point on SP is East Portland. SP is a part owner of both Portland Traction and Portland Terminal Companies. The former has no operating rights north of East Portland. The latter operates entirely on the south side of the Willamette River. As I have already indicated, Milwaukee, by virtue of trackage rights stemming from the net-yet-concluded Northern Lines merger case, will have the right to come into Portland from Vancouver over the Columbia River bridge now used by SP&S, NP, GN and UP. This route reaches the south side of the Columbia River at North Portland, thus making possible direct and low cost interchange between Milwaukee and Peninsula Terminal.

The undeveloped nature of Rivergate's land is convincing evidence that the three carriers now reaching, in one fashion or another, small parts of Rivergate did not develop their original trackage for the purpose of providing service

to and from Rivergate. Peninsula Terminal developed its 1½ route miles of switching-type tracks to serve the stockyards owned by the same interests. As time has gone on Peninsula Terminal has added other industries, now said to number about 15. As a result, and despite the sharp reduction in its stockyards shipments, Peninsula Terminal has been able to maintain an average of about ten carloads per day. Only one of the 15 industries now on Peninsula Terminal is in Rivergate. Its traffic, though undoubtedly important, is only a portion of Peninsula Terminal's ten car daily average.

3. *Rivergate in Relation to Regional Rail Service*

The ton-miles generated by Western District Class 1 railroads increased 36.2 percent in the nine years from 1958, the recent low point, through 1966. My estimate is that by 1990, western railroad generated ton-miles will be twice the volume of 1966. Portland as one of the major western railroad terminal points will share in this growth, provided its rail facilities are adequate to meet this predicted increase of the next 25 years. Adequacy includes much more than, for example, the miles of terminal yard track. Rail traffic by 1990 will be concentrated even more than at present on main lines of railroads and will seek the lowest terminal costs and the most effectively mechanized freight handling terminal conditions. A higher proportion of rail traffic will be intermodal, requiring mechanized transfer from ship to rail or from truck to rail, or vice versa.

It is unnecessary to describe the rail network in detail for the purposes of this case. A few general comments will suffice, as follows:

1. Portland is now served by the Union Pacific which now provides single-line freight routes to and from Seattle, Spokane, Los Angeles, Salt Lake City, Denver, and the Missouri River.

2. Portland is now served by the SP&S Group, including GN and NP, that after merger will provide single-line freight routes to and from Seattle, Spokane, Denver, Twin Cities and Missouri River Crossings, as well as St. Louis and Chicago.

3. Portland is now served by Southern Pacific that now provides single-line freight routes to and from Ogden, San Francisco, Los Angeles, Phoenix, El Paso, Houston, New Orleans, Dallas, Memphis and St. Louis.

4. Assuming consummation of the Northern Lines merger, Milwaukee will have been authorized to serve Portland and will then provide single-line freight routes to and from Seattle, Spokane, Twin Cities, Missouri River Crossings, Milwaukee, Chicago and Terre Haute.

5. Portland also is served by two-line freight routes to and from San Francisco and Salt Lake City (GN-WP) and to and from Denver (SP-DRGW); and by three-line freight routes to and from Los Angeles, Phoenix, Houston and Dallas (GN, WP, ATSF).

The numerous single-line freight routes reach almost every point in western United States with freight traffic community of interest, either as receiver or producer of traffic for Portland. This is a fact of significance in this Peninsula Terminal Acquisition application by the SP&S Group and UP. Unless all four railroads have equal access to the Peninsula Terminal gateway, the two owners will automatically create non-single-line switching conditions for the other two.

Bulk traffic, moving in solid blocks of cars or in fixed-consist unit trains, is impeded as much by terminal switching delays as by the necessity for linehaul interchange between two carriers. From the standpoint of Rivergate, if Milwaukee traffic has to be switched by SP&S or UP before reaching the Peninsula Terminal interchange, its single-line advantage to and from Milwaukee, Terre Haute or Cedar Rapids will lose most of its time and efficiency value. Similarly if SP traffic has to be switched by SP&S or UP, its single-line advantage to and from Medford, Reno, Stockton, San Francisco, Fresno, Phoenix, El Paso, New Orleans and Memphis will lose its time and efficiency value.

4. *Rivergate's Present and Proposed Rail Service*

Peninsula Terminal is the only railroad now serving the northeast part of Rivergate. This I shall call the northern gateway. Peninsula Terminal serves only one industry in Rivergate. It connects with the SP&S Group and with UP at North Portland.

The following proposals are before the Commission:

1. In Finance Docket No. 24679, SP&S and UP seek to acquire control of Peninsula Terminal through ownership of all its capital stock. They oppose the inclusion of any other railroad and the efforts of SP and Milwaukee to reach Peninsula Terminal through trackage rights.

2. SP by petition in Finance Docket No. 24679 seeks (a) inclusion as an equal joint owner in Peninsula Terminal and (b) trackage rights between East Portland and the Peninsula Terminal yards as a condition of participation in ownership or independent of the request for inclusion. In Finance Dockets Nos. 24890 and 24891, SP has filed applications under section 3(5) of the Act under which it seeks (c) its common use of the terminal facilities of

Peninsula Terminal and bridge trackage rights over 6.75 miles of UP between Peninsula Terminal and the SP-UP connection at East Portland and, (d) SP's common use of UP's terminal facilities between Peninsula Terminal and the SP-UP connection at East Portland.

3. By petition in Finance Docket No. 24679, Milwaukee seeks inclusion as an owner in the proposed transaction and also trackage rights from the SP&S main line over jointly owned tracks of applicants SP&S and UP to Peninsula Terminal. In its December 27, 1967 reply to this petition, UP asserts that the Northern Lines merger case does not give Milwaukee automatic access to Portland and goes on to raise other objections.

In my testimony below, I shall not treat the several applications and petitions individually, but will address myself to the proposed transfer of ownership of Peninsula Terminal. This first step must be taken in such a way as to assure to Rivergate the adequate rail service which it must have. Basic to my consideration are the rail traffic potential of Rivergate and the kind of rail service it will need if it is to develop into a major industrial and freight interchange area, and make full use of its unique location with its six miles of frontage on deep water.

5. *Rivergate's Rail Service Needs*

At full development, under recent estimates, 500 to 600 freight cars per day will be handled to, from or within the Rivergate Industrial District. This means a movement of 40,000 tons of rail freight as a weekday maximum and roughly half or 20,000 tons as a weekday average.

At full development, 5, 10 or 15 years from now the volume to and from Rivergate will reach 5,000,000 tons of rail traffic annually. Under present switching practices, it has

been estimated that the Rivergate District must then have 50 miles of track for the storage of a maximum of 4,500 cars. As my testimony will show, the use of modern switching practices will reduce this figure to 2,000 cars.

In my view, the immediate future will see continued changes and improvements in railroad operating techniques. These will be indispensable not only for the efficiency of port areas and industrial districts such as Rivergate, but also for the very survival of the railroads as freight carriers. As related to Peninsula Terminal and Rivergate, let me briefly describe four different types of rail freight service and then consider their switching characteristics.

First, unit trains. Ultimately a large portion of rail traffic to or from Rivergate will move in fixed-consist, never-uncoupled unit trains carrying bulk commodities and perhaps other commodities moving in large volume.

Second, semi-unit trains. The less mechanized version of the unit train is the train of 40 to 150 cars moving in a block, that is, without repeated handling as single cars in hump yards and terminals.

Third, the trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) or piggyback trains. This is a type of semi-unit train since its cars are taken off at intermediate or terminal points in blocks. TOFC-COFC is gradually taking the place of box car movements. For Rivergate this means that its small industries may not need sidetracks since its road facilities will be adequate for intercity and local truck movements and rail piggyback service.

Fourth, miscellaneous service involving industry trains and switching runs to, from and within Rivergate.

In my Exhibit No. 2, I estimate the daily train movements, cars, car days, revenue tons and track requirements at Rivergate.

Using the daily traffic estimates shown on the exhibit, I turn to the switching situation. For over a century the railroads have been increasing the size of their equipment, that is, more powerful locomotives, larger freight cars, longer trains and higher capacity facilities such as car dumper and belt conveyors. The 100-car train is commonplace; 200-car trains are no longer unusual; and longer trains of as many as 350 cars are in the experimental stage.

Some improvement of this type also has occurred in railroad switching technology. But the more efficient, modern methods of train operation are not yet widely used in terminal service for various reasons. Shippers and receivers of freight have not yet worn out and replaced their own loading and receiving equipment. Many one or two car sidings are in occasional use, although these are being phased out gradually. New switching technology is also limited by operating conditions attending numerous ownerships of railroads in metropolitan areas such as Portland. Later I shall say more of the terminal situation at Portland.

Rivergate, a new facility with potential for all types of traffic, presents a major opportunity for use of new technology in rail terminal service. In fact, this new technology must be used if Rivergate is to realize its potential. Unit and semi-unit trains eliminate nearly all or a substantial part of the time wasted in terminals by freight cars and their cargo. In its ultimate form, the unit train of 100 or more specially designed cars moves loaded in one direction and empty in the other between two highly mechanized terminals. These terminals load and unload the never-uncoupled cars as they move slowly through the loading

and unloading facilities. Under optimum conditions, the unit train moves directly through terminal areas to and from loading and unloading facilities without switching delays. Groups of cars in linehaul semi-unit trains require some terminal switching, but switching economies are available if the semi-unit train moves directly through terminal areas to and from tracks adjacent to the loading and unloading facilities.

As indicated by my estimates and assumptions in my Exhibit No. 2, Rivergate at full development would handle daily two unit trains loaded with dry bulk or liquid bulk materials. One of these trains would have its unloading/loading operation fully mechanized so that the train would be unloaded and loaded within hours after arrival uncoupling engine or cars. From the second train which would be of the semi-unit type, cars would be uncoupled and switched in small groups. This train would be in Rivergate for two working days, and it would be necessary to have track space for two such trains.

These two daily unit trains would handle into or out of Rivergate 20,000 tons of cargo daily or 100,000 tons per five-day week. Even this immense weekly capacity may be insufficient, if, for example, four vessels each carrying 30,000 tons of bulk cargo, had to be loaded or unloaded in that week.

My Exhibit No. 2 provides for one TOFC-COFC train of 100 cars (5,000 tons of revenue freight). The TOFC-COFC yard at Rivergate will presumably be located on interior land a mile or more from the waterfront and would include facilities for loading and unloading trailers and containers moving by rail, highway, water or air. Volume will vary according to the day of the week, vessel loading or unloading and seasonal changes. Terminal time of three days per car is assumed because of variability of actual conditions, but this terminal time should prove to be a maximum.

Rail piggyback traffic continues to grow even in the face of the general decline in rail traffic in 1967. With the containership becoming dominant in the North Atlantic ocean trades and with the container revolution coming also in the Pacific, I am confident Rivergate will have major TOFC-COFC activity in both domestic and foreign trade, provided it develops adequate facilities, and the Portland linehaul railroads provide low-cost, fast and reliable piggyback service to and from Rivergate.

Finally, as to large-industry and miscellaneous rail service at Rivergate at full development, my Exhibit No. 2 shows two industry trains handling 200 cars and two switching runs handling 100 cars. The two industry trains, one inbound and one outbound, would each handle an average of 65 loaded and 45 empty cars. Unit trains also are a potential here, for example, fixed-consist trains of iron ore to a steel plant such as Oregon Steel Mills.

The two switching runs shown in my Exhibit No. 2 (Line 5) would originate and terminate loads and provide and remove empties as required. The loads and empties would come from and go to all the Portland linehaul railroads and, to some extent, the local switching lines such as Portland Terminal. The switching crews would be handling 100 cars, and these would have the highest terminal time per car within Rivergate.

My estimates above may not be fully realized, and there may be variations in the types of service required, when Rivergate reaches full development. Nonetheless, it is clear that Rivergate will utilize unit, semi-unit and containerized trains for the movement of large volumes of freight. Obviously, these trains must have maximum efficiency in terminal operation if they are to fulfill their potential. I next take up the switching situation at Portland and Rivergate.

6. *Switching at Rivergate and Portland*

For maximum development, Rivergate must have economic, fast and reliable freight service provided by all the linehaul railroads, individually and as a group. An essential link in good rail service is the fast and efficient handling of trains and cars in terminal areas. Hence Rivergate's concern here is as to efficiency of Peninsula Terminal as a carrier switching Rivergate industries through the northern gateway.

At present, rail service at Rivergate moves through the northern gateway via Peninsula Terminal and the southern gateway via UP's Barnes Yard. Peninsula Terminal has its junction with the SP&S Group and UP at North Portland. It is within the Portland switching district. UP and SP&S are the only linehaul railroads now having direct access to the northern and southern gateways to Rivergate. SP&S also handles traffic from or to Rivergate on behalf of its parent lines, GN and NP.

Southern Pacific's nearest point to the northern gateway is East Portland where it connects with UP. East Portland is 6.75 miles from Peninsula Terminal over UP's main line. SP seeks bridge trackage rights over this line in Finance Docket Nos. 24679 and 24680.

Milwaukee's lines now end at Longview, Washington, about 46 miles north of Portland. In the Northern Lines merger decision (331 I. C. C. 228, 276), the Commission provided "for the opening of Portland to Milwaukee" as a condition of approval of the merger.

The Port's position as presented by witness Dirker is that the development of Rivergate requires that all linehaul railroads serving Portland have direct access to Rivergate and that joint ownership and operation of Peninsula Termi-

inal by all the Portland linehaul railroads will promote the needed direct access of such carriers to Rivergate.

The old-fashioned method of uncorrelated transfer of freight cars from one carrier to another within the switching district will not provide Rivergate with the rail service it needs. In my experience, in terminal areas with complex switching such as Portland, the rhythm of one switching operation is so out-of-step with the next in the chain that a minimum of 24 hours is consumed for each transfer. On this basis, cross-Portland switching routes may sometimes take as much as three to four days. Trucks perform such cross-city movements in a few hours or less.

To illustrate the situation, tariffs show East Portland as point of interchange between UP and SP. With such an interchange, UP would move the cars to Albina Yard, there to rest until the next switch run to Peninsula Terminal, there to rest until the switch into Rivergate. In actual practice, I understand, one of these switch moves is sometimes eliminated; under an agreement with UP, SP handles some trains directly to or from UP's Albina Yard.

This illustration points up the inefficiency involved if the SP, a major linehaul carrier, does not have direct access to Rivergate through Peninsula Terminal. Of particular importance is the need for the direct terminal movement of unit, semi-unit and container trains, whether by UP, the SP&S Group, SP or Milwaukee linehaul.

A word about Milwaukee's situation. Milwaukee and its friendly connection and possible merger partner, CNW, serve the great midwestern granaries. Unit or semi-unit trains of grain from the Midwest via these lines should move to Rivergate for processing for domestic distribution or for export. If under the Northern Lines case, Milwaukee has the right of access to Peninsula Terminal, its

unit trains could move direct to Rivergate's northern gateway. But if not, the trains would have to go through an interchange with GNPB at Hoyt Yard in Portland or at Vancouver or with UP in Portland for movement via North Portland or Barnes Yard. The terminal delay and additional operating costs are, in my opinion, unnecessary and unjustifiable. As I have shown, the efficient way for unit trains is to have direct access to or from Rivergate, regardless of which carrier handled the train in linehaul operation.

Several points require discussion here:

First, Peninsula Terminal's present facilities could not efficiently handle unit trains and heavy volume to and from Rivergate. As shown by ground inspection and the map attached to the 24679 application, difficult track conditions exist from the UP-SP&S connection with Peninsula Terminal at North Portland over Peninsula Terminal's line to a tail track and thence in a reverse direction, through an underpass beneath SP&S to Rivergate. Doubtless, this undesirable track pattern is adequate today, since Peninsula Terminal now serves only one industry in Rivergate, which lies just beyond the boundary line at the northern gateway. My testimony has shown that Peninsula Terminal will be useful as the northern gateway to Rivergate only if it can handle unit and semi-unit freight trains of 100 cars or more.

Second, as Exhibit No. 2 shows, a maximum of eight trains would be operating within Rivergate each day. Even with all eight trains there at one time, the trains would be of sufficiently different assignments to avoid serious interference with each other.

Third, it is my judgment that running track ownership by the Port within Rivergate is a second present policy. However, when Rivergate's rail transportation has been

fully developed, the Port could then consider ownership of Rivergate's running tracks by all the linehaul railroads.

Fourth, I have already noted that UP switches for SP&S the Rivergate traffic brought by SP&S into or taken from Barnes Yard. Consideration might well be given to SP&S becoming the switching line for all the railroads through the northern Peninsula Terminal gateway. This would apply, of course, only to other than unit trains since the latter, being never uncoupled, should move without engine change or other terminal delays and do not require switching service.

7. *Conclusion*

Joint ownership of Peninsula Terminal by all Portland linehaul railroads will promote adequate rail service for Rivergate for the short term. For the long term, equal access to Rivergate's northern gateway for all Portland linehaul carriers would provide Rivergate with optimum rail service. Joint use of Peninsula Terminal tracks by all the linehaul railroads can best develop through their joint ownership.

Plainly Rivergate as a key project in Portland's industrial and commercial expansion must have optimum rail service. Joint ownership by all Portland linehaul railroads of Peninsula Terminal is a first step in obtaining this optimum service. It is essential to the future plans of Rivergate, Portland, the State of Oregon and the Nation to have unit train, semi-unit train, TOFC-COFC and industrial switching service to and from all linehaul railroads serving Portland.

I emphasize again my basic view that single-car switching to and from small industries with a so-called one-car side-track has become obsolete. It is not only an inefficient method because of engine and crew cost, but is obsolete

because the truck performs this type of service better and faster. TOFC-COFC rail service is efficient because its cars are handled in blocks and because idle days when the freight car is standing still are reduced. The box car is gradually being replaced by the container and/or the truck trailer.

Rivergate's future will be less advantageous for Portland and much more costly for the rail carriers if obsolete switching procedures are more necessary through failure to provide efficient operating conditions for the unit, semi-unit, TOFC-COFC and industrial switching trains of all the linehaul carriers. Ownership of Peninsula Terminal by all the Portland linehaul carriers will make possible the treatment of Rivergate as a single unified and efficient switching district.

EXHIBIT 4.

STATEMENT OF WILLIAM S. DIRKER, JR.

1. *General*

My name and business address are William S. Dirker, Jr., The Port of Portland Commission, P. O. Box 3529, Portland, Oregon, 97208.

I graduated from Stanford University and then attended the Graduate School of Business at Stanford. My work experience is as follows:

1948-1951 Portland Hide and Wool Company
Assistant Manager

1951-1953 Oregon Steel Mills
Assistant Personnel Manager

1953-1961 Steel Construction Company
Office Manager

- 1961-1963 The Port of Portland
Administrative Assistant to General Manager
- 1963-1967 The Port of Portland
Manager, Research and Planning Department
- Oct. 1967 The Port of Portland
Manager, Special Projects Department

In the course of my work as manager of the Research and Planning Department most of the economic analysis and planning for the Rivergate Industrial District referred to later was completed. Some of this was done under my direct supervision and some under my general supervision.

The Port of Portland was created in 1891 by the Oregon State Legislature and has since been active in developing port and other facilities for use by various modes of transportation in the Portland District. These include the Rivergate area at the confluence of the Willamette and Columbia River adjacent to the North Portland Peninsula in the district.

The Port has intervened in these cases to protect the public interest in providing the important Rivergate area with adequate transportation service.

In this statement, I first present The Port's position, then set out various economic facts pointing to the importance of Rivergate as a major factor in the growth of Portland and Oregon as well as the domestic and foreign commerce of the Nation, and conclude with a description of Rivergate its development and its need for adequate and economic rail service.

2. *Rivergate, the Columbia-Willamette System and The Port of Portland's Position*

The Columbia-Willamette system is the second largest river improvement in the United States. The Portland District lies at the confluence of the Columbia and the Willamette 100 miles from the Pacific Ocean. The Port since 1891 has actively participated in the river improvement from a 25-foot channel to the present nearly-completed 40-foot channel able to take large ocean-going vessels between Portland and the sea.

Both the Federal government and The Port of Portland have made substantial expenditures in the Columbia-Willamette River navigation system. As of December 31, 1967, those expenditures totaled about \$120 million.

The Port has supported and developed various facilities and projects in the district. These I shall later describe.

Rivergate is of immediate concern in these cases. It lies at the very confluence of the two rivers and is now in the initial stages of development. For the most part, it is undeveloped. In preparation for its development, Rivergate has been studied in depth by The Port staff and by professional consulting and other organizations. Recently, in 1965, Battelle Memorial Institute of Columbus, Ohio, prepared a land demand study. The Industrial Council Executive Group of the prestigious Urban Land Institute evaluated the project. In September 1967, the consulting firm of Daniel, Mann, Johnson & Mendenhall (DMJM), of Los Angeles, completed a comprehensive study of Rivergate and the North Portland Peninsula. In addition to ten years of active study by the professional Port staff, the Port has expended about \$400,000 on outside consultants. The City of Portland and the County of Multnomah have also participated in these studies and have made significant staff contributions.

Rivergate has been discussed with rail and other carriers informally and at several conferences. The Freight Interchange Conference was held in Portland on July 13-15, 1966 and the Portland Railroad Conference on June 20, 1967.

My Exhibits 5 and 6 fix the location of Rivergate in the Portland District. For a generalized view, Exhibit 5 shows the North Portland area plan. The left portion of the map is colored and is the area of concern in this case. This area, west of the main line of the Spokane, Portland, and Seattle Railway, includes Rivergate Industrial District and the Dock Commission's Terminal 4. As indicated by the legend, the green parallel lines show the location of the few industries in operation or under construction in the Industrial District.

My Exhibit 6 is the detailed plan for Rivergate Industrial District which is owned by The Port of Portland. This map shows in some detail transportation features and areas of use contemplated as the result of economic analysis and physical planning. Both transportation and use are necessarily tentative.

These cases before the Interstate Commerce Commission bring to a head the question of rail service to Rivergate. At its meeting on January 8, 1968, The Port of Portland Commission adopted a resolution stating its position in this matter as follows:

1. The full development of the Rivergate area will be of great economic value to the greater Portland area and to the entire Pacific Northwest.
2. Adequate service to the Rivergate area by rail and other modes of transport will enhance the domestic and foreign trade of the United States.

3. Sound transport logistics for the Rivergate area are essential in promoting the rapid industrial and commercial development of the Rivergate area.
4. The development of the Rivergate area requires that all railroads serving Portland have direct access to the Rivergate area on fair and reasonable terms.
5. Joint railroad ownership and operation of Peninsula Terminal Company by all railroads serving Portland will promote the needed direct access of such carriers to the Rivergate area.

3. *Description of the Growth of Portland and Oregon*

To put this case in perspective, I first comment briefly on the growth of Oregon and Portland. Oregon has traditionally been a resource-based economy, largely in forest products and agriculture. The western one-third of Oregon consists of mountains and valleys which contain the bulk of the State's timber, agriculture, manufacturing, and population. The eastern two-thirds of the State is semi-arid and sparsely populated, and has few centers of economic concentration. We have been essentially a net exporter of raw products and an importer of finished goods. In many ways we have been an economic colony of the more populous manufacturing centers of the East and have exhibited many of the characteristics of a colony. Over the last 25 years, our growth has been strong, well ahead of the national average, at a rate slightly ahead of the rate of Washington, but about half of the rate of California, our booming neighbor to the south.

Population in Oregon, certified by the Center for Population Research and Census, Portland State College, as of July 1, 1967, was 2,006,360, or about one percent of the Nation's population. Distribution of population through-

out Oregon and the Northwest is well illustrated on my map Exhibit 7. Over 40 percent of the State's population is located in the Portland area. The projected growth rates for Oregon are anticipated to level off to slightly below the national average during 1965-74 and rise to about the national average during 1975-84.

The population of greater Portland (Portland Standard Metropolitan Statistical Area) has increased from 501,000 in 1940 to 889,000 in 1965. It has been projected to 1,081,500 in 1975 and 1,440,000 in 1990. The Portland SMSA includes Multnomah, Clackamas, and Washington Counties in Oregon and Clark County in Washington.

My Exhibit 8 details the employment base of Oregon broken down by Standard Industrial Classification (SIC). Of particular interest is the declining trend in agriculture and the sharp rise in manufacturing and services. The State's transition from its former "colonial" status is further illustrated in my Exhibit 9 showing a decline in lumber and wood products manufacturing and a sharp increase in other manufacturing at a rate rising faster than the United States as a whole.

The increasing emphasis on manufacturing as well as on wholesale and retail trade and services is even more noticeable in the Portland area. This is shown by my Exhibit 10. As contrasted with Seattle and Los Angeles, the Portland area ranks low on a per capita basis as a manufacturing center. However, the area is becoming increasingly oriented toward manufacturing.

On the other hand, the diversity and stability of the Portland economic base is demonstrated by the data in my Exhibit 11. Taking the employment mix of the United States as 100, the table in this exhibit ranks the various metropolitan areas in the order of how nearly they fitted

the national profile in 1960. Philadelphia was the most diverse with an index of 73.0. Portland ranked fifth with an index of 56.3. Note how this compares with the index of 11.8 for Seattle; which is so heavily committed to aircraft manufacturing.

The future of Oregon and Portland clearly depend upon how effectively we meet the challenge to expand the manufacturing, trade and transportation base of this area. Rivergate is the keystone of the opportunity for the future development of Portland and Oregon. It is also the keystone to its progress as a distribution and transportation center. This subject I discuss in the next section of my statement.

4. *Portland as a Distribution and Transportation Center*

Portland has been historically a major distribution and transportation center for the Pacific Northwest. This fact clearly appears in my map Exhibit 12 depicting the fundamental geography of the Northwest. As the Northwest's leading port, Portland lies 100 miles inland at the center of the hub of a vast, highly developed competitive transportation network radiating in all directions from Portland.

The growth of Portland as a wholesale and retail trade center is dramatically shown by the data below.

Growth of Wholesale Trade and Retail Sales

Wholesale trade in 1954	\$1,840,194,000
Wholesale trade in 1963	\$3,464,537,000
Percent increase	88.3%
Retail sales in 1954	\$ 901,306,000
Retail sales in 1963	\$1,279,337,000
Percent increase	41.9%

Comparison-Ratio of Wholesale Trade to Retail Sales

Ratio in 1954	2.04
Ratio in 1958	2.38
Ratio in 1963	2.85

Comparison-1963 Per Capita Wholesale Trade

Los Angeles-Long Beach SMSA	\$2,613
Seattle SMSA	\$2,692
San Francisco-Oakland SMSA	\$3,489
Portland SMSA	\$4,029

Source: Census of Business and Current Population Report, P-25, U. S. Department of Commerce, Bureau of the Census

As indicated by the last comparison (per capita wholesale trade), Portland, for its size, serves a much larger wholesale area than any of the other major West Coast centers.

The leadership of Portland as a distribution center for the Pacific Northwest is now established as shown by comparing public warehousing in Portland and Seattle in 1958 and 1963. The data below is taken from the United States Census of Business.

Public Storage of General Goods (In Millions)

	Portland		Seattle	
	1958	1963	1958	1963
Floor space—sq. ft.	1.113	1.283	1.190	0.996
Revenue	\$2.899	\$5.063	\$3.236	\$2.705

New construction since 1963 gives Portland even greater leadership today. Moreover, Portland is closer than Seattle to the geographical center of the Pacific Northwest. Naturally it has gained from the rapid expansion of manufacturing in California and the increasing flow of consumer goods northward.

Portland's leadership in the wholesale trade and distribution function may be illustrated in numerous ways. Let me give two examples: The Pacific Northwest headquarters for Volkswagen, the widely sold German automobile, is located in Portland; and all major manufacturers of general aviation aircraft maintain their regional headquarters in the Portland area.

Extensive transport facilities of all types provide service to and from Portland's market areas as well as to and from the various areas shipping traffic through the port. They may be summarized as follows:

(1) Railroad. Portland is served by five linehaul railroads, Union Pacific, Southern Pacific, Spokane, Portland & Seattle, Great Northern and Northern Pacific. I understand that if the Northern Lines merger becomes effective as approved by the Commission, one company, Great Northern, Pacific & Burlington Railroad, will serve the Portland area in place of the last three named railroads. In addition, if the Northern Lines merger becomes effective, I understand that the Milwaukee Road will have the right to reach Portland directly. See my Exhibit 13 entitled "Schematic Outline of Principal Rail Lines Serving the Pacific Northwest, Effective on the Northern Lines Merger."

(2) Motor carrier. The Portland area is served by some 275 certified motor carriers operating over 10,000 units of equipment to, from and within the area. Of the 275 carriers, 51 are regular-route common carriers of general commodities. The balance are specialized or irregular route common carriers.

(3) Barge. The Portland-Vancouver area is served by 43 barge and towing companies. Of the 43, 18 are strictly towing companies while 25 out of the 43 own barges.

(4) *Ocean.* Numerous ocean vessels call at the port of Portland. The number of ship calls at Portland in 1966 was 1,673, a total in line with the experience in recent years.

(5) *Air.* Through Portland International Airport owned and operated by the Port, ten commercial airlines (Braniff International, Continental, Eastern, Flying Tiger, Northwest, Pacific, Pan American, West Coast, Western and United) provide airfreight service to and from all parts of the country and the world.

These carriers move large tonnages of freight to and from the Portland area and through its port. In the next section, I review this traffic to show the importance of Portland as a transportation center and to provide the basis for determining Rivergate's future need for adequate transportation by all modes of transportation, particularly rail.

5. *Freight Traffic—Oregon and Portland*

Portland's economic function as a wholesale trade, distribution and manufacturing base for the Pacific Northwest and as the Northwest's principal port leads inevitably to large volumes of freight traffic. Details concerning this traffic are developed in my next series of exhibits. The exhibits are largely self-explanatory and may be summarized as follows:

My first three exhibits show the importance of Oregon and Portland with respect to rail traffic. My Exhibit 14 tabulates the total carloads and tons of rail traffic originated and terminated in Oregon by Class 1 railroads for the years 1960 to 1966, inclusive. Tons originated have increased from 14.2 million in 1960 to 16.9 million in 1966, and tons terminated from 6.9 million in 1960 to 8.8 million in 1966.

My next Exhibit 15 is a map showing the origin and destination states and regions in the 1965 University of Oregon traffic study used in my next exhibit.

My next Exhibit 16 shows in tabular form by states and regions the origin and destination of Oregon rail traffic in 1960. As indicated by the source cited in the exhibit, the commodity groups are those used by the Interstate Commerce Commission. Page 3 of this exhibit combines and totals by major commodity groups the origin and destination tonnages to and from Oregon in 1960 as shown on pages 1 and 2 of the exhibit.

My Exhibit 17 tabulates the barge and towboat traffic, in tons, handled on the Columbia-Willamette Rivers to and from the Portland-Vancouver area for the years 1960 to 1966, inclusive. In this seven-year period, the tonnage ranged from 5.9 million to 7.1 million tons,

Portland has been improving its position as a port for the transshipment of oceanborne commerce. In 1965 Portland ranked 12th among all U. S. ports in tons of oceanborne commerce. The following data shows its sharp growth in oceanborne commerce as compared with Seattle.

Amount & Growth of Oceanborne Commerce: 1955-1965

Portland—1955 (short tons)	8,535,868
Portland—1965 (short tons)	10,489,989
Percent increase (decrease)—1955-1956	22.9%
Seattle—1955 (short tons)	7,131,056
Seattle—1965 (short tons)	6,602,839
Percent increase (decrease)—1955-1965	(7.4%)

My Exhibit 18 compares foreign imports and exports, in tons, through Columbia River and Puget Sound ports. The Columbia River ports had a rate of growth nearly double that of Puget Sound. Another measure of the

rise of Oregon and its customs district is shown by my Exhibit 19 recording the value of waterborne imports and exports from 1954 to 1966, inclusive. This compares the customs districts of Oregon, Washington, San Francisco and Los Angeles. The Oregon customs district is by far the fast growing port area on the Pacific Coast.

My Exhibit 20 records the airfreight through Portland international Airport for the eight years from 1960 to 1967, inclusive.

6. *The Rivergate Area at Portland*

In this concluding section of my statement, I discuss and describe The Port of Portland's Rivergate Industrial District and consider generally what comprehensive rail service means to Rivergate.

At the time of its creation in 1891, the Port's primary purpose was to dredge a channel between Portland and the sea and to make the products of Oregon available to world commerce. Since that time, the Oregon legislature has added repeatedly to the Port's responsibilities and powers. Today it is charged with the promotion of "maritime, shipping, aviation, commercial, and industrial interests of the Port." To accomplish these purposes, the Port has the power, among other things, to levy taxes, issue bonds, exercise the right of eminent domain and own and operate wharves, piers, drydocks, warehouses, elevators, railroads, steamships, barges, river boats and tow-boats.

In its early years, the Port did extensive dredging of the Columbia and Willamette Rivers and at one time operated in the rivers as many as five of the largest dredges in the world. A major problem in dredging is the disposal of the spoil dredged up from the river bottom by the hydraulic

pipeline dredges. In the 1920's, for example, the Port used major spoil from the river to create the Swan Island area which then became Portland's first airport and later the present Swan Island Industrial Park.

Rivergate is a part of this spoil disposal program, but more importantly, it is a vital part of the future industrial and economic development of Portland and the Northwest. Originally, Rivergate was mostly low-lying marsh land subject to flooding at various times of the year. The Port first acquired land in the Rivergate area in the 1940's as a spoil disposal area. Gradually acres were added, and the land was filled to usable elevations.

Meanwhile, the Port staff was studying the future use of the area. I have already referred to the recent studies of the area. But our studies, in fact, go back at least ten years to 1958. In that year, a consulting engineering firm prepared a land use study and recommended industrial use of this area. Again in 1961 a consulting firm analyzed a number of other potential industrial sites in the Portland area and lower Columbia and concluded that there was no site superior to Rivergate upon which to expand the industrial base of the region's economy. At this time, the Port owned about 600 acres. Numerous other topographical surveys, soil investigations, land use, traffic and other studies were prepared up to 1965. Then came the Battelle and DMJM studies along with the purchase of additional acreage. Thus today the Rivergate Industrial District consists of almost 3,000 acres and has completed the major part of its planning stages.

Rivergate involves major public and private investment. The Port has already invested over \$5 million. The high-capacity arterial access along the Columbia-Swift Boulevard Route will involve a public expenditure of over \$2

million. The Port's new dredge OREGON, a 5,000 horsepower, 30-inch pipeline dredge, continues to fill land in the Rivergate area and will continue to do so for numerous years.

Rivergate is still in its developmental stage. Most of the land is unoccupied; much of it has yet to be reclaimed. A few industries occupying about 265 acres of land operate or will operate near the southern boundaries. These include, on the west side, Ashgrove Lime and Portland Cement Company for a chemical lime plant, 30 acres; Conmetco Division of Consolidated Freightways for an aluminum foundry, 20 acres; Collier Carbon and Chemical Company, an affiliate of Union Oil Company for a urea packaging plant, 25 acres; and Oregon Steel Mills, a division of Gilmore Steel Company for an integrated steel mill, 150 acres; and on the east side, Crown Zellerbach Corporation for a pole yard, 40 acres.

The Port estimates that it will expend a minimum of \$50 million in the development of Rivergate. Other public agencies will invest over \$200 million in response to the need for facilities. A conservative estimate of the ultimate public and private investment exceeds \$500 million.

I should comment on two features of the planning:

First, I have already presented the precise plan of the Rivergate Industrial District as my Exhibit 6. I call attention to certain feature of the plan as it pertains to railroads. The present plan contemplates two loops, one through the interior of the industrial area, and one exterior and adjacent to the barge basin. Both are tentative in view of the undeveloped character of Rivergate. These major loops are designed to accommodate unit and semi-unit trains, and both loops will connect with the linehaul

railroads through Peninsula Terminal and the Union Pacific's Barnes Yard. Rivergate will have facilities for handling TOFC-COFC traffic. All the industrial sites are intended to have access to rail and truck service; and The Port will certainly protect transportation service to and from waterfront industries. Dr. Plowman, in his testimony, will cover the transport needs of Rivergate.

In the case of Rivergate and the Peninsula, the demand for the uses of the land was first identified, and then the physical planning undertaken, and not the reverse, as is often the case. This feature has prevailed along with careful planning of other aspects. Let me list the nature of various information developed in recent years by public bodies and private consultants in cooperation with, or sponsored by, The Port.

Trafficway studies by Oregon State Highway Department; aerial photographs by the United States Geodetic Survey and private contractors; Land For Industry study by Metropolitan Planning Commission; land use studies by Cornell, Howland, Hayes & Merryfield; economic demand studies by the Battelle Memorial Institute; soil studies by Dames & Moore; aerial topographic surveys by K. B. Wood & Associates; terminal facilities information from Arthur D. Little, Inc.; and the comprehensive 1967 DMJM Study to which I have already referred.

In all our Rivergate studies and conferences, transportation has been carefully considered. I have already referred to the recent transportation conferences held in Portland, the Freight Interchange Conference on July 13-15, 1966 and the Portland Railroad Conference on June 20, 1967. At the first conference, for example, an important part of the report prepared by DMJM for The Port concerned the activities, future plans, and prospects of the

major carriers. The statement of the conference purpose included consideration of "the most efficient manner of handling freight perhaps through a new approach to the design or concept for an interchange function and facility" for Rivergate and the North Portland Peninsula area.

To illustrate how the various conferences and studies have directed our attention to transportation, I present my Exhibit 21 which contains a few excerpts of the report made by the Urban Land Institute to The Port as sponsor of a panel convened in Portland on July 19-23, 1965. The Institute, headquartered in Washington, D. C. is an independent, nonprofit organization to study and report on trends affecting urban real property and to advance research and education in the planning, development and rebuilding of urban areas. In this instance, the panel consisted of six men who came from all parts of the country and were experienced in real estate industrial development.

Our continuous study of transportation as a vital factor in Rivergate's development is basic to The Port's present position in these cases. Its position is also supported by the expert advice of consultants experienced in evaluating the needs of new industrial districts such as Rivergate and by The Port's experience in locating new industries in Rivergate.

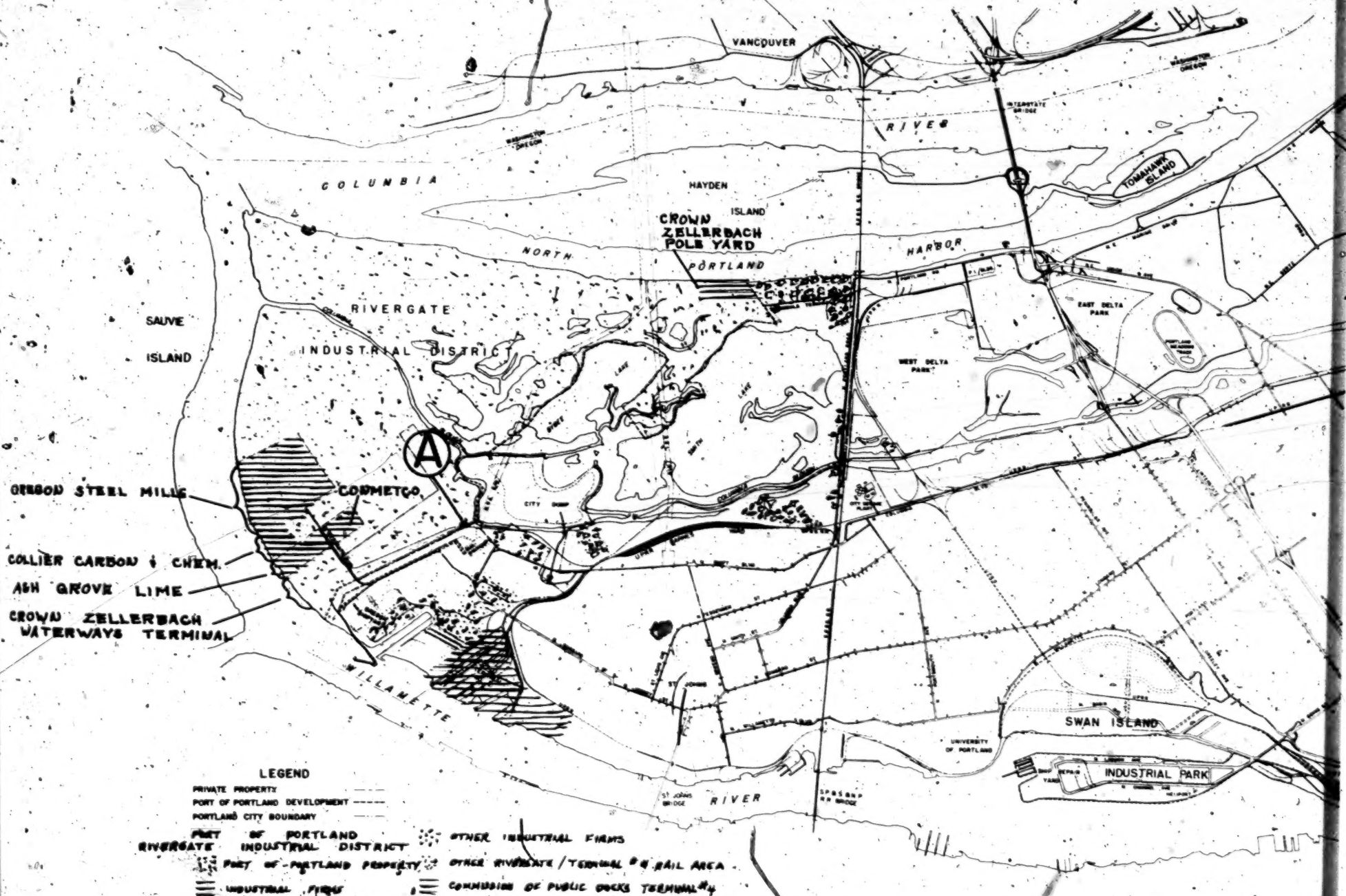
Oregon's traditional economic base, particularly the forest products industry, now has some elements of adversity. With the growth of population and markets in the Pacific Northwest, The Port of Portland is trying to meet its responsibilities by developing Rivergate so as to expand the manufacturing and distribution base of the area. The Port Commission and much of the community believe that the success of Rivergate will be the fulcrum upon which the economic vitality of this region will hinge.

Having the long experience of marketing and research behind us and recognizing the changes now occurring in transportation technology, The Port supports joint railroad ownership and operation of Peninsula Terminal by the linehaul railroads serving Portland. For the proper development of Rivergate, The Port strongly urges that all railroads serving Portland have direct access to Rivergate on fair and reasonable terms. The Port does not undertake to develop or suggest the means for this direct access. It leaves that matter to the Commission and the railroads. The Port's concern is this: The means of direct access must assure that Rivergate will have the fast, economic and efficient rail service necessary for the proper development of Rivergate in the best interests of Portland, the State of Oregon, the Pacific Northwest and the Nation.

EXHIBIT 5A.

Witness: W. S. DIRKER.

The map showing North Portland Peninsula Area plan is reproduced on the next page without color.



NORTH PORTLAND PENINSULA AREA PLAN

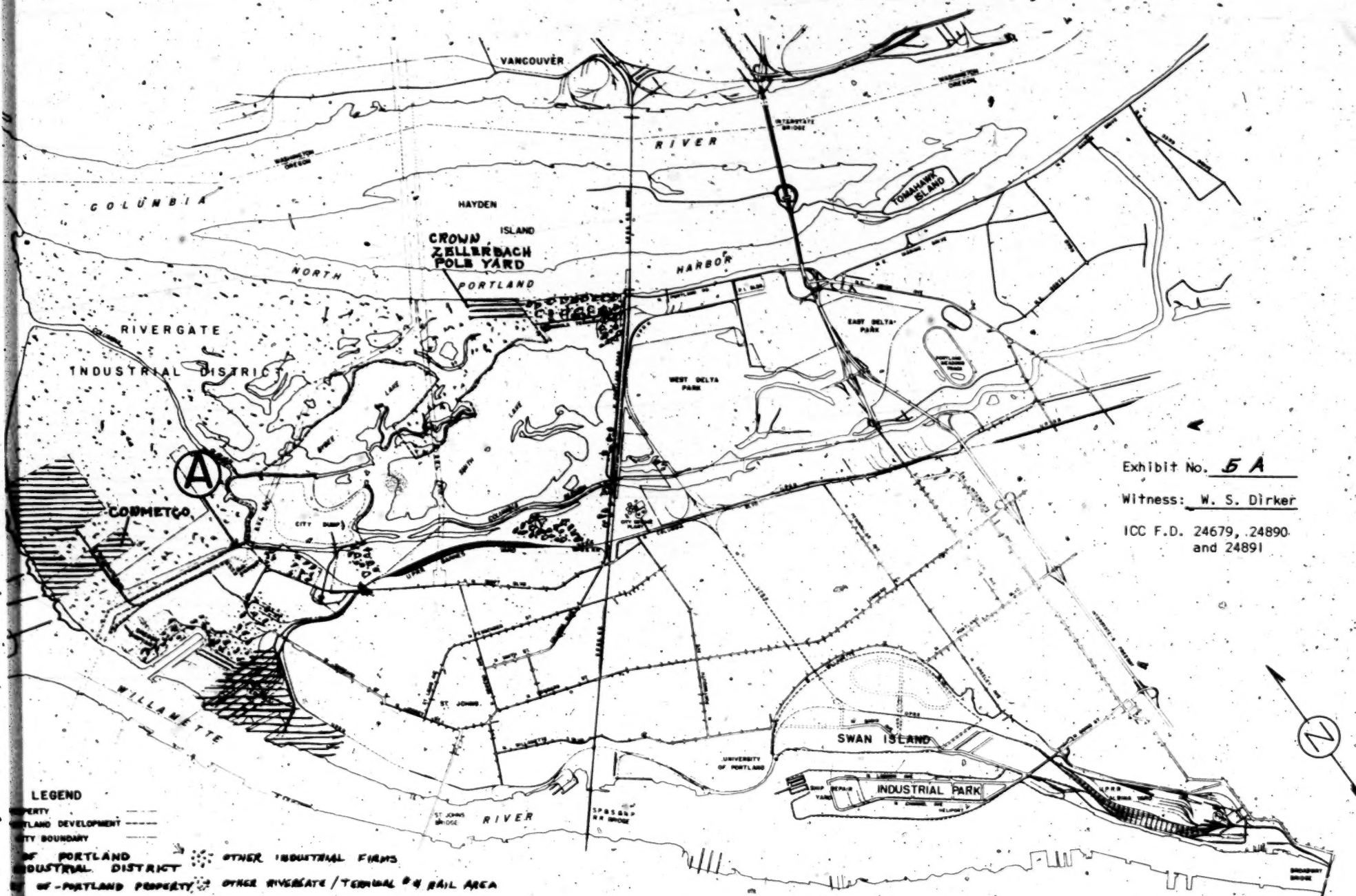


Exhibit No. 5A
 Witness: W. S. Dirker
 ICC F.D. 24679, 24890,
 and 24891

NORTH PORTLAND PENINSULA AREA PLAN

THE PORT OF PORTLAND
 PORTLAND, OREGON
 MAY, 1985

DRAWING BY: CHEN, SEPT. 1984
 UPDATED BY: R&P SEPT. MAY, 1985
 APPROVED BY: [Signature]
 DRAWING NO. 52-51

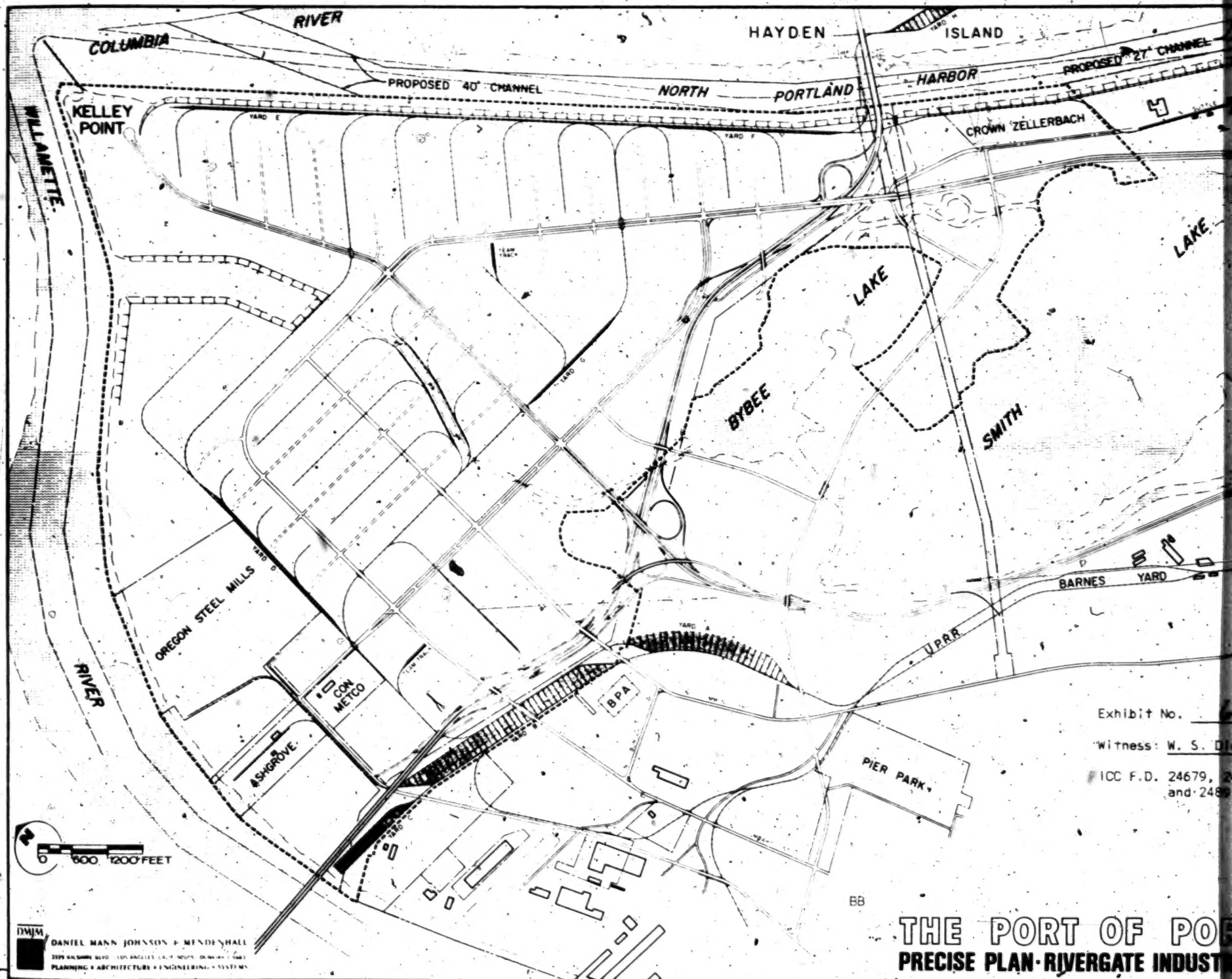
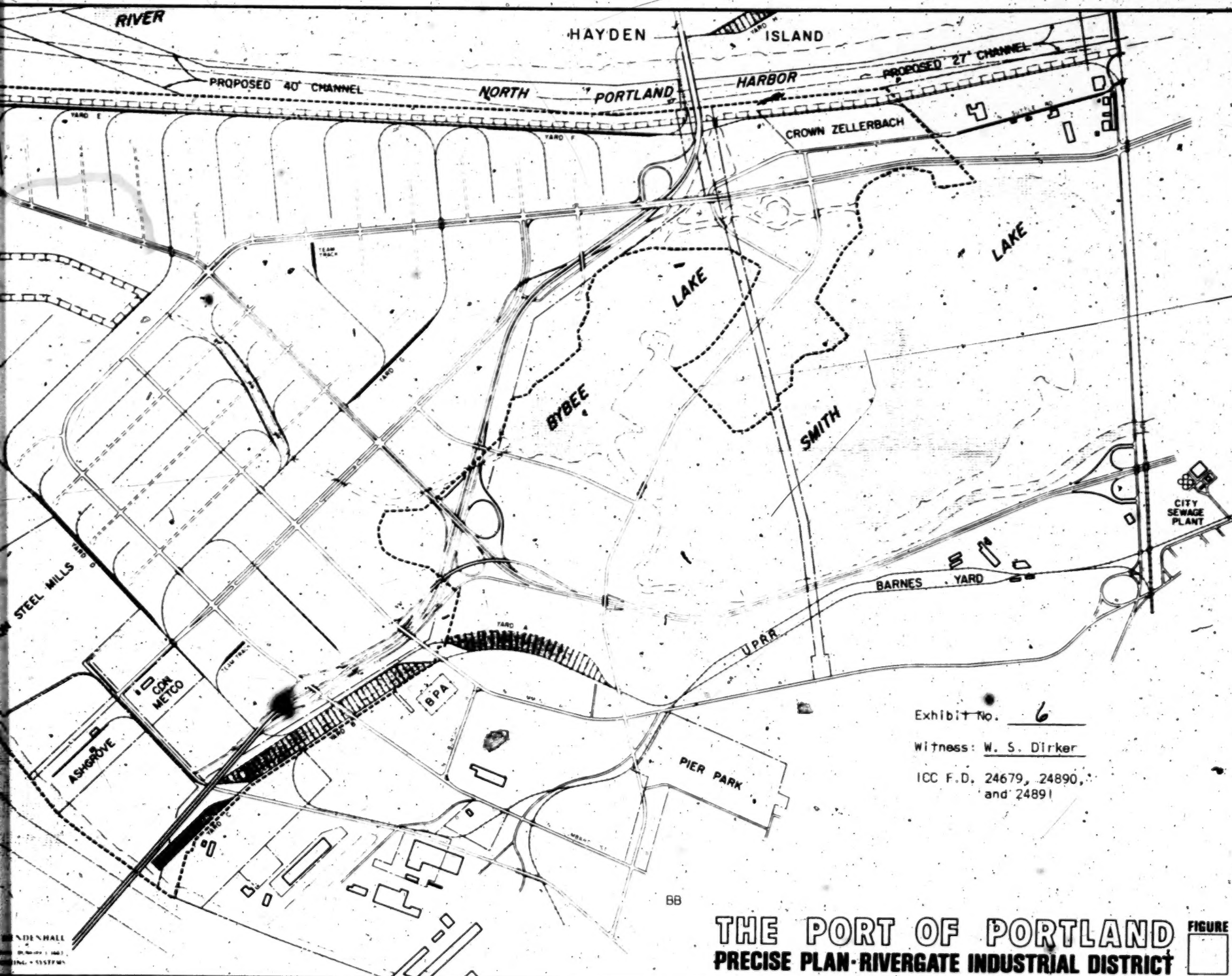


Exhibit No. _____

Witness: W. S. D. _____

ICC F.D. 24679, 24
and 24891

BB

Exhibit No. 6Witness: W. S. DirkerICC F.D. 24679, 24890,
and 24891

THE PORT OF PORTLAND
PRECISE PLAN-RIVERGATE INDUSTRIAL DISTRICT

FIGURE

EXHIBIT 6.

Witness: W. S. DIRKER.

The map on the preceding page shows the Precise Plan, Rivergate Industrial District, and is reproduced without color.

EXHIBIT 22.

STATEMENT OF ALFRED M. ESCHBACH.

My name is Alfred M. Eschbach. I am Chief Engineer of the Commission of Public Docks of the City of Portland, Oregon. My address is 3070 N. W. Front Avenue, Portland, Oregon 97210.

I have had 28 years of engineering experience in the fields of management, planning and construction. I received a Bachelors Degree in Civil Engineering from Washington State University and a Masters Degree in Civil Engineering from Cornell University. I served for 20 years with the U. S. Army Corps of Engineers, retiring with the rank of Colonel in 1958. From 1958 to 1963 I was Director of Public Works for the City of Spokane, Washington. Since 1963 I have been Chief Engineer of the Commission of Public Docks, Portland, Oregon. I am affiliated with the following professional organizations: American Association of Port Authorities, Member of Engineering and Maintenance Committee; American Society of Civil Engineers; National Society of Professional Engineers; Society of America Military Engineers.

The Commission of Public Docks is an autonomous arm of the City of Portland Municipal Government. It is charged with the responsibility of providing facilities for the accommodation of the city's maritime commerce and with the protection and development of that commerce.

The Commission of Public Docks at its regular meeting on Thursday, January 4th, took formal action in support of the Port of Portland Commission's intervention in this case, and took the position that acquisition of the Peninsula Terminal Railroad by all of the railroads serving the area would best serve the needs of the area and the community. Our support of this case has two goals:

First, and directly is continued adequate rail service now, with improved and broadened rail service for the future to and from dock facilities in the Rivergate area. Equal, efficient and unencumbered service by all possible railroads is the essential and critical element to this objective.

Secondly—present and future economical and adequate rail service to and from the entire Portland complex.

In discussing these two goals, I will describe the facilities provided at Portland for the handling of ocean and river commerce, particularly the Dock Commission's present and proposed facilities in the Rivergate area. I shall also show the importance of Portland as the leading seaport in the Pacific Northwest.

The Commission owns and operates 21 ocean berths. In the inner harbor near downtown Portland are 3 terminals, all of which handle general cargo almost exclusively. They are Terminal 1—6 berths, Terminal 2—3 berths, and Albina Dock—2 berths. Under construction at Terminal 2 is a new two berth complex which, when completed, will be a flexible multi-purpose 25 acre facility designed to serve both container ships and vessels carrying conventional cargoes. Downriver in the Rivergate area referred to as the outer harbor, is Terminal 4, a 10 berth terminal of 155 acres. Located at Terminal 4 is the Commission's grain elevator with a storage capacity of 8 million bushels—the largest

elevator on tidewater west of the Mississippi. The grain facility is leased to Cargill, Inc. and ships between 30,000,000 and 40,000,000 bushels of wheat per year. Terminal 4 is also the location of the Commission's commercial bulk handling facility. Here on Pier 4 is a bulk unloading pier equipped with a Dravo straight line bulk unloader tower with a rated free digging capacity of 900 tons per hour. Scheduled for delivery this coming March 15th is a new container crane which will be erected on Pier 2, providing the finishing touches to Portland's first full scale container facility. The facility presently handles containers with conventional cranes. The Commission has invested two million dollars in dock reconstruction and container equipment to serve this container facility specializing in this new method of cargo transfer. Outbound bulks also move through Terminal 4.

This combination of grain, bulk, container and conventional general cargo facilities creates a complex which generates the major portion of rail traffic to and from all Dock Commission facilities. Today this multi-purpose terminal accounts for more than half the Commission's revenue tonnage not including grain. The center of gravity of Portland's commercial harbor shows a history of movement downriver from its early day location. For example, all commercial docks except one grain elevator are now located downstream from the Broadway Bridge. The harbor's petroleum facilities are also located in this lower harbor.

The Port of Portland's Rivergate study indicates an acceleration in the desire of industry to locate in the downriver area. The Commission of Public Docks recently acquired additional property adjoining its Terminal 4, and when developed, this property will provide 110 acres for expansion.

The total of Portland's waterborne commerce is handled over both private and public docks. The Commission is concerned chiefly with general cargo of which almost 100% moves over its facilities, and with those commercial bulks and other cargoes for which proprietary facilities are not available. The sum of the cargo handled at Portland's private and public facilities makes Portland the second largest port on the West Coast of the United States, second only to the huge Los Angeles-Long Beach complex. The latest available figures from the U. S. Army Corps of Engineers Waterborne Commerce of the U. S. revealed the following rankings among the principal ports of the U. S. Pacific Coast. These figures are rounded off.

Total Waterborne Commerce

1. Los Angeles-Long Beach	34,000,000 tons
2. Portland	16,700,000 tons
3. Seattle	14,700,000 tons
4. San Francisco-Oakland	10,000,000 tons

Foreign Commerce

1. Los Angeles-Long Beach	19,000,000 tons
2. Portland	4,500,000 tons
3. San Francisco-Oakland	3,140,000 tons
4. Seattle	2,550,000 tons

Off-Shore Commerce, Foreign & Coastwise

1. Los Angeles-Long Beach	32,000,000 tons
2. Portland	10,500,000 tons
3. Seattle	6,550,000 tons
4. San Francisco-Oakland	5,640,000 tons

Portland's tonnage continues to grow. Off-shore tonnage in 1967 was 12.7% over 1966 and the over-all tonnage over Commission facilities increased 8% in the same period. In the past 13 years The Commission of Public

Docks invested \$22 million in capital improvement of its maritime terminals. The Commission plans an additional \$16,800,000 capital program over the next 10 years and will go to the voters of the City of Portland in the May 28th Primary Election to seek general obligation bond authorization to finance \$12,500,000 of that program. The remainder will be financed from the Commission's annual earnings.

The bond fund will accomplish the following:

1. \$3,283,000 to provide and adapt the new Terminal 2 complex to the point where it will be the best container conventional cargo terminal that can be built. The amount earmarked includes funds for a container crane, transit shed and supporting rail, highway, container yard and service project.
2. \$7,000,000 to provide the basic dock structure and back-up facilities for a new two berth facility. A duplicate of Terminal 2 emphasizing the container handling capability of the multi-purpose concept.
3. \$1,250,000 to upgrade existing facilities at Terminal 1 and 4 to provide added dock strength and dock area as necessary for the heavier concentrated loads of packaged cargo and the equipment necessary for its handling.
4. \$500,000 to construct a specialty dock to accommodate sideport and roll-off roll-on cargoes.
5. \$500,000 to provide water pollution abatement from all Commission facilities.

In addition Commission earnings of \$4,270,000 will be used for an eight point program of general upgrading construction, equipment acquisition and property acquisition.

The 110 acre expansion area adjacent to Terminal 4 mentioned above, is being seriously considered as the site for the next echelon of Dock Commission terminal construction. Should this be the final site selection, the \$10,550,000 of the 10 year \$16,800,000 capital program will be expended in this portion of the Rivergate area.

I have been informed about the so-called northern line merger which, if carried out, will consolidate various railroads serving Portland. The Milwaukee Railroad, I understand, will have direct access into Portland of the merger becomes effective. Our Terminal 4, as expanded, should have efficient direct rail service to and from all areas of potential cargoes. If our expanded facilities are to prosper under the changing railroad technology, the rail service must fit the needs of this commerce and must be economic and rapid. I mean that the railroads serving Rivergate should serve our dock areas with large volume service expeditiously and at the lowest possible cost. The Union Pacific and the Spokane-Portland and Seattle Railroad now have access into and out of the Dock Commission areas on the south side of Rivergate. The Peninsula Terminal Railroad is and will be part of the railroad logistics of the total Rivergate area.

The Dock Commission supports the Port of Portland's position, desiring joint ownership of the railroad by all the railroads serving Portland now, and in the future.

EXHIBIT 23.

STATEMENT OF MILTON A. MOWAT.

My name is Milton A. Mowat. I am employed by the Commission of Public Docks located at 3070 N. W. Front Avenue, Portland, Oregon, 97210, in the capacity of Deputy Sales and Traffic Manager, a position I have held for the past two and one-half years. Prior to that I was employed as the Traffic Manager of the Port of Tacoma and Tacoma Chamber of Commerce for three years and Blake, Moffit & Towne in Portland for ten years, seven as Traffic Manager and three as Assistant Traffic Manager. I have been admitted to practice before the Interstate Commerce Commission and the Federal Maritime Commission.

The Dock Commission's Chief Engineer, Colonel Alfred M. Eschbach, will describe the facilities of the Commission at Portland. Terminal 4 is located in the general Rivergate area. As Deputy Sales and Traffic Manager, I have studied Terminal 4 and Rivergate, as well as other parts of Portland, with respect to rail service. Movements to Rivergate, we believe, will be heavily rail oriented. The importance of the total cost of shipping by railroad, the freight rate plus switching charges if applicable, will bear very close scrutiny by any industry seeking to locate in this or other industrial area in Portland or the Pacific Northwest. The presence of added or additional transportation costs applying at Rivergate but not at competing sites could preclude its consideration in the selection of a site. These charges could exist and be a deterrent to the natural growth of the Rivergate Industrial District if all of the line haul railroads serving Portland are not granted authority to jointly purchase the Peninsula Terminal Company.

On June 20, 1967, a conference was held in Portland at the request of Governor McCall of Oregon and Mayor Schrunk of Portland. It was attended by the Governor, the Presidents of the Great Northern, Milwaukee, Northern Pacific, Southern Pacific and Union Pacific railroads, the Vice-President of the Spokane Portland & Seattle Railway and representatives of the City of Portland, of the Port of Portland, and of the Commission of Public Docks. The principal subject discussed was the practice of the Portland railroads to assess non-competitive switching charges on certain rail movements originating or destined to Port of Portland or Commission of Public Docks facilities including Rivergate. (See Exhibit No. 23A.) Responding to the questions raised at this conference, the railroad presidents in their telegram of November 1, 1967 to Governor McCall announced the following (See Exhibit No. 23B):

"Referring to meeting which we attended in Portland on June 20 at which time the Port of Portland and Commission of Public Docks asked the rail carriers to make certain provisions which it was felt would aid in the development of industrial areas. Our railroads have agreed to a single basis of switching charges at all common points in North Pacific Coast Territory which will include the ports within that area. This single basis of switching charges will be absorbed on all carload traffic with two exceptions. The first exception is that a minimum line-haul revenue of \$100 per car after absorption will be maintained. The second exception is that switching charges will not be absorbed in instances where tariff rate items specifically exclude such absorptions. The latter exception reserves to carriers the right to publish low rates to meet competition and which may not provide

sufficient revenue from which to absorb connecting line switching charges. It is felt these arrangements will permit the development of the port property at Portland as well as at other competitive points in the Pacific Northwest."

It is our understanding that any railroad serving Portland which does not own an interest in the Peninsula Terminal Company would by the terms of Exemption No. 1 in the above telegram from the railroad presidents, be required to assess a switching charge if the carload revenue was less than \$100.00 after the absorption of this switching charge. This would not be true of the railroads that own an interest in the Peninsula Terminal Company as they would be governed by the provisions in their respective tariffs which provide for the assessment of switching charges if the carload revenue is less than \$40.00 after absorption of the switching charge. (The minimum carload revenue is \$67.00 in the case of the Southern Pacific Company.) We understand that the minimum carload revenue of \$40.00 per car mentioned above will be increased to \$60.00 effective on or about April 1, 1968.

Industries locating in Rivergate will likely ship their products to or from points within a radius of 50 to 100 miles of Portland as well as throughout the Pacific Northwest, the Pacific Coast, and possibly beyond. However, in many cases the carload revenue on shipments within a 50 to 100 mile radius of Portland is less than the \$100.00 minimum carload revenue required of non-owners of the Peninsula Terminal Company for the absorption of these switching charges. (See Exhibits No. 23 C and D.) The assessment of switching charges in these cases could work a serious hardship on industries located in Rivergate to the point of either denying them the benefits of rail transportation or increasing their total transportation cost and

making it difficult for them to compete effectively. This situation would not be present if all the line-haul railroads serving Portland owned an interest in the Peninsula Terminal Company.

The Commission of Public Docks supports the position of the ~~Port of Portland favoring joint ownership and~~ operation of the Peninsula Terminal Company and direct access to Rivergate by all of the line-haul railroads serving Portland. This joint ownership and operation and direct access would be a most important step in developing economic rail service for Rivergate and Portland.

EXHIBIT 23A.

Witness: M. A. MOWAT.

Railroad Conference, Portland, Oregon, June 20, 1967

MILTON A. MOWAT, Deputy Manager, Sales & Traffic—
Commission of Public Docks

Let us re-orient ourselves as to the locations of The Port of Portland and Commission of Public Docks facilities.

~~The Port of Portland's Rivergate Industrial District~~

~~The Commission of Public Docks Terminal No. 4, and the
Terminal No. 4 Extension~~

~~The Port of Portland's Swan Island Industrial Park~~

~~The Commission of Public Docks Albina Docks, Terminal
No. 1, Terminal No. 2~~

The Portland area is served by the following major rail yards:

The Vancouver Yard of the S. P. & S.

The Albina Yard of the Union Pacific

The Brooklyn Yard of the Southern Pacific

The Lake Yard of the Portland Terminal Railway

In addition to these major railroad yards there are other railroad yards which facilitate the handling of rail cars.

The Barnes Yard of the Union Pacific

The East Portland Yard served by the S. P. & S. Southern Pacific and Union Pacific

The Portland Traction Co. Yard

(The Portland Traction Co. is jointly owned by the S. P. and U. P.)

The Depot Yard of the Portland Terminal Railway

The Hoyt Street Yard of the S. P. & S.

As you can see Portland is ringed with major or secondary railroad yards to serve its seaport, distribution and industrial needs.

The physical switching within the Port's Rivergate Industrial District, the Commission's Terminal No. 4, the Terminal No. 4 Extension, the Port's Swan Island Industrial Park and the Commission's Albina Docks, all located on the east side of the Willamette River, is performed by the Union Pacific Railroad. Switching at the Commission's Terminals No. 1 and 2, located on the west side of the Willamette River, is performed by the Portland Terminal railway, headed by Mr. Jones, which is owned jointly by the Northern Pacific, Southern Pacific and Union Pacific railroads. I would like to mention that although the Portland Terminal Railway is owned jointly by three separate railroads, the Northern Pacific, Southern Pacific and Union Pacific, and this in itself could theoretically create certain inherent problems, their performance of switching to and from the Commission's Terminals 1 and 2 has been consistently excellent. The Union Pacific Railroad, who perform the switching at Terminal No. 4 have also done a yeoman job, often going far out of their way to help us when the need arose.

. . .

EXHIBIT 24.

STATEMENT OF T. E. ROCHFORD.

My name is T. E. Rochford. I have been employed by United Stockyards Corporation for over 29 years. I am presently Division President of Portland Union Stockyards which is a division of United Stockyards Corporation. I am also president of Peninsula Terminal Company, a wholly owned subsidiary of United Stockyards Corporation. I reside in Lake Oswego, Oregon, and my office address is Portland Union Stockyards, North Portland, Oregon 97043.

United Stockyards Corporation became owner of Peninsula Terminal Company in the following manner: For many years, Swift and Company and certain of its subsidiaries and affiliates owned substantial investments in the capital stocks of companies engaged in the stockyards business. One of these so owned was the Portland Union Stockyards Company which, in turn, owned all of the issued and outstanding shares of capital stock of the Peninsula Terminal Company.

In 1920, the Attorney General of the United States instituted proceedings against certain major meat packing companies including Swift and Company, seeking injunctive relief under the Sherman Act and the Clayton Act. Eventually, that action was concluded by the entry of a Consent Decree which prohibited, among other things, the defendants from acquiring or continuing to own, stock of public stockyards and terminal rail carriers. As a result, in 1936 the sale of the stock interest of the meat packers involved the Portland Union Stockyards Company stock going to United Stockyards Corporation. Among the assets of the Portland Union Stockyards Company was the ownership of all issued and outstanding capital stock

of the Peninsula Terminal Company. United acquired the stock of Peninsula by merging with Portland Union Stockyards Corporation in 1963. United now operates in Portland as a division under the name of Portland Union Stockyards.

The acquisition of control of the Peninsula Terminal Company by United Stockyards Corporation was approved by the interstate Commerce Commission in the proceeding entitled "Stockyards Railway Company, *et al.* Control" decided March 9, 1943, Finance Docket No. 13610, 254 ICC 207.

At that time, it must be remembered, stockyards operations required adequate rail switching facilities connecting with line-haul carriers as well as facilities for unloading and loading of animals received by rail or forwarded by rail from the stockyards. Generally, stockyards companies found it necessary to provide or arrange for their own facilities and service because the existing trunk line carriers did not provide them. Since the rail switching services provided by the Peninsula Terminal Company provided the only means of access by rail to the facilities of the Portland Union Stockyards by the line-haul carriers, it was considered, in 1936, a necessary adjunct of the operation of public stockyards. This was true, not only of Portland, but of many other livestock markets.

United Stockyards was interested in 1936 in owning or controlling the Peninsula Terminal Company solely to serve the business of our public stockyards. We were not then, nor are we now, interested in railroad operations except as these occur as necessary appendages to the main stockyard operations. Since our business interest does not extend to operating railroads, we would not be interested in extending the facilities and services of Penin-

sula Terminal Company in North Portland in view of the probable major investment required. Our interests are concerned primarily in the field of real estate and operating stockyards.

It is our desire, if possible, to sell at a reasonable price the shares of capital stock of the Peninsula Terminal Company which we own and which are all of the authorized issued and outstanding shares. Frankly, it is our desire to confine our activities to the businesses we are more familiar with, namely those of operating stockyards and public livestock markets and to real estate. Our organization is not equipped to follow railroad operations efficiently. We feel that due to our comparatively small investment in railroad properties, it would not pay us to develop an organization for this purpose. In fact, it may be noted that this is not a new thought, but has existed practically from the date of acquisition. We have consistently stated that we do not desire to engage in transportation by railroad in any form, and do not desire to be classed as a railroad.

United Stockyards therefore is interested in selling Peninsula Terminal. The roadbed owned in fee consists of some 15,550 lineal feet of main track, spurs and siding, described in Sheet 3 of Exhibit 14 to the Application. All ties are treated and relaid in sand. No rock ballast is used. The distance from one end of the main line to the other is slightly less than 8,000 feet and change in elevation from one end of the line to the other is about five feet, the west being lower than the east end and most of the change in elevation being on the west end.

Peninsula owns two diesel locomotives, one a 50-ton General Electric Diesel Electric, and the other a 70-ton Cooper-Bessemer Diesel Electric and parts and tools used

in the operation thereof. Peninsula also owns tools for track maintenance and a speeder with car attached for use of workmen. In addition to this equipment, Peninsula owns an engine house large enough for storage of both diesel locomotives at the same time when not in operation and has a parts supply room and mechanical repair room with heat. Peninsula has its own yard office which is approximately 14' x 23' 6" and contains lockers for workmen and train crews. Also, a sand house about 11' x 18' is maintained for the drying and storage of sand for use in the locomotives.

Peninsula operates two engine shifts per day, one starting 9 A. M. to 5 P. M. and one starting 9 P. M. to 5 A. M., seven days per week. Light repairs to equipment and roadbed are performed by regular Peninsula employees while heavy maintenance and repairs are accomplished with extra part-time employees on its crews. Prior to January 1, 1968, loading and unloading of livestock was handled by agreement with the Portland Union Stockyards to furnish the men with Peninsula paying the men by the hour for the actual time necessary to do the work. After January 1, 1968, Peninsula will furnish this service by agreement with Portland Livestock Market, Inc. which is the present lessee and operator of the stockyards.

Peninsula has a basic labor agreement dated April 14, 1943, with the Brotherhood of Railroad Trainmen and a basic agreement dated June 15, 1941, with the Brotherhood of Locomotive Firemen and Enginemen. These contracts have been modified from time to time by mutual agreement of the parties.

At the present time, Peninsula pays engineers \$29.05 per day with one engineer receiving a rate of \$32.68 per day for servicing locomotives, exclusive of mechanical re-

pairs and maintenance. Travelers Health and Welfare Insurance is paid, vacation allowances are the same as those given by the connecting trunk lines, and no holiday pay is awarded. Switchmen are paid \$37.88 per day with the footboard yard master receiving \$30.21. Seven holidays are paid and if a holiday is worked, an extra day's wage is paid. Travelers Health and Welfare Insurance is provided to switchmen and their vacation allowances are the same as those of the connecting trunk lines.

Management and office personnel of Peninsula consists of four: a President, T. E. Rochford; Vice President, R. W. Hunt; Secretary-Treasurer, C. N. Curtis; and Assistant Secretary-Treasurer, C. A. Fountain. R. W. Hunt is located in Chicago while the rest of the officers are in the office at North Portland. They handle all of the accounting, labor matters, office work such as demurrage and interchanging reports, and general claims or other matters. All are joint employees with United Stockyards Corporation which bills Peninsula for time spent on its work. Insurance matters are handled by the United Stockyards Corporation office in Chicago.

The Peninsula Terminal Company receives cars from main line roads for delivery to industries and delivers cars from industries to the main lines. Four tracks have been provided for this service and are owned either by trunk lines or by trunk lines and Peninsula jointly. Peninsula engines and crews pick up and set out loads and empties when requested during the time engine crews are on duty. The joint agent for the main lines generally informs Peninsula of the service desired after receiving information on inbound or outbound movements. The joint agent for the main lines also makes the inbound interchange report whereas Peninsula makes the outbound interchange report. Peninsula connects with Union Pacific, S. P. & S.,

Northern Pacific Railway Company and the Great Northern Railway. Southern Pacific movements are through one or the other of those four lines.

Exhibit TER 1 is a statement of cars handled by Peninsula for the years 1960 through 1967 with commodity descriptions of numbers handled. This statement is taken from records kept in the normal course of business by Peninsula under my direction and control and the statement is true and correct. In 1967, for example, 34% of cars handled transported wood products, 33% chemicals, 8% livestock, 7% packing house products, 13% paper products, and others 5%.

In 1960, by comparison, of cars handled, approximately 16% transported wood products, 8% chemicals, 48% livestock, 15% packing house products, 6% paper products and others 7%. These figures show that livestock and packing house products shipments have decreased markedly while wood products shipments have increased in the last few years. The total volume of business handled by Peninsula during the years 1960-1967 was at its lowest in 1967 and has shown some improvement since that year. The decline in shipment of livestock and packing house products is due largely to the closing in of the Swift packing operations in North Portland and the change of the status of Portland Union Stockyards from that of a business engaged in the acquisition of livestock for slaughter at North Portland to a public auction yard.

The total termination of operations at the Swift plant in North Portland can be expected to further reduce the volume of business handled during the next few years. Presently, only agricultural chemicals and hides and wool processing are handled for Swift, and the existing facilities in North Portland are likely to be moved to other areas.

Livestock shipments will undoubtedly continue to decrease in volume because of the trend established by packers and truckers in the handling of livestock and the revision of the stockyards method of handling as noted above. The wood products industry on Peninsula, including paper, containers and corrugated products, will likely increase shipments because of the predominant position taken by Crown Zellerbach in that area.

Peninsula is paid by connecting lines for all shipments moving to and from Peninsula. Divisions for Peninsula's services are established by Joint Division Sheet 8-R in connection with traffic handled via Great Northern, Northern Pacific, S. P. & S., Union Pacific and connections. All charges are absorbed by the connecting carriers and no charge is made by them to the industry. Intraterminal and intraplant charge is \$22.44 and is assessed by Peninsula to the industry.

Intraterminal, intraplant and livestock handling charges are assessed according to Peninsula Terminal Company Local Switching Tariff No. 23, P.U.C. Ore. No. 32. ICC No. 32. Exhibit TER 2 is a copy of this tariff. Approximately 1% of the total Peninsula revenue is derived from such charges. Demurrage is regulated and assessed under Tariff 4-G (ICC No. H-17) issued by H. R. Hinsch, Agent. Peninsula Terminal Company is a party to Trans-Continental Territory Lines Tariff, C. B. Guthrie Tariff Bureau, Inc., Agent.

Peninsula owns no land which could be considered available for industry development. Peninsula does not have a traffic solicitor and does not attempt to trace cars after they have left Peninsula or before they arrive. However, demurrage is handled in Peninsula's office and revenue accrues directly to Peninsula and it is responsible to

the car owners for per diem. Since switching revenue is based on a division agreement with the main lines, Peninsula does not quote rates nor is it familiar with routing. Peninsula does have a team track and does solicit business from small shippers. Since shipments on Peninsula move from a joint railway operation, Peninsula is neutral where choice of main line movement is involved.

I am familiar with the basis of sale and the price to be paid by the Trunk Lines for the stock of the Peninsula Terminal Company as set forth in Exhibit 7 to the Application, which is the Contract to Purchase.

In order to arrive at a value for the stock, the value of the various assets of the Peninsula Terminal Company was established primarily by appraisal of the American Appraisal Company in November 1962, as set forth in Exhibit 14 to the Application.

Major assets of the Terminal Company consist of land and roadway. The American Appraisal stated that the land was valued as if vacant, with consideration to prevailing prices in the vicinity for industrial tracts. Consideration was also given to sales within the last two years of abutting vacant unimproved land between the right of way and North Portland Harbor, and to current costs of filling the land. Sales of more remotely situated industrial land were also considered, as were estimates of the value of land in the North Portland Harbor Industrial District after fill and development. Finally, the relative elevation and dike protection of the subject land of the Peninsula Terminal Company was considered.

Having arrived at an overall valuation for the land of Peninsula Terminal Company, the American Appraisal Company then determined the cost of reproduction of the roadways, structures and equipment, except for rolling stock, and in arriving at an estimate of such cost of reproduction, consideration was given to local prices for labor

and materials, with provision for contractors' overhead and profit. An estimate was then made by the American Appraisal Company of observed depreciation of such roadways, structures and equipment; and a net value was arrived at, which, together with the land value, represents the valuation established for the bulk of the Peninsula Terminal Company's assets, and bulk of the purchase price to be paid for the company's stock.

During the intervening time between the appraisal and acceptance of the proposal and purchase price by the Trunk Lines, no adjustment was made in the valuations of land and roadway. The total valuation of assets to bring the purchase price for the stock down to date of February 28, 1967, as included in the Contracted for Purchase, was adjusted only to reflect the changes in rolling stock, working capital and miscellaneous additions and betterments which occurred during such intervening period, with the amounts involved based primarily on book values as included in the Peninsula Terminal Company's books and records. The agreement for the purchase and sale of the stock of Peninsula was reached through arm's length negotiations. In my opinion the price for such stock is fair and reasonable to both seller and buyers.

As provided in the Contract for Purchase, the seller, United Stockyards Corporation, has agreed to manage the operation of the Peninsula Terminal Company in accordance with the policies, conditions and standards established from time to time by the Peninsula's Board of Directors. Included in such management services would be supervisory, accounting, stenographic and other necessary managerial services as now provided by United Stockyards Corporation. Included in the management services would be office space, office supplies and personnel to accomplish the foregoing.

I am also familiar with the Balance Sheet and Income Statements of Peninsula which are included as Exhibits 8-B and 9-B of the application. These exhibits are based on records kept in the normal course of business according to prescribed rules and regulations of the Interstate Commerce Commission. They are true and correct to the best of my knowledge.

EXHIBIT TER-1.

PENINSULA TERMINAL COMPANY

North Portland, Oregon

FREIGHT COMMODITIES HANDLED
by calendar years 1960 through 1967

Commodity	Cars Handled						
	1967	1966	1965	1964	1963	1962	1961
Wood Products	943	1,629	824	598	192	404	616
Oil	39	58	86	46	8	-	-
Chemicals	902	816	690	621	511	417	455
Aggregate	31	14	36	66	72	93	73
Packinghouse							
Products	200	336	419	485	565	519	616
Paper Products	346	245	268	279	348	334	330
Steel	18	62	108	119	81	117	43
Livestock	225	417	708	1,005	1,120	1,194	1,660
Miscellaneous	44	63	77	52	88	50	117
Totals	2,748	3,640	3,216	3,172	2,885	3,128	3,910
							4,993

EXHIBIT 25

STATEMENT OF W. A. KAVET

My name is W. A. Kavet and I am employed as the Joint Local Freight Agent of the SP&S-Northern Pacific-Great Northern and Union Pacific Railroads at the North Portland Freight Station in North Portland, Oregon.

The North Portland Freight Station is responsible for signing of bills of lading on outbound shipments as well as preparation of necessary documents for both outbound and inbound shipments for industries located on Peninsula Terminal Company tracks at North Portland, Oregon. This is done for the trunk line carriers for whom I work. These trunk line carriers take billing to account and collect line-haul charges on shipments handled via Peninsula Terminal. Peninsula, in turn, receives a division of the revenue for the terminal switching service it performs.

The Freight Station is operated by the Union Pacific and the SP&S alternately every two years, the Union Pacific in 1967 and 1968, the SP&S to follow in 1969 and 1970. All joint expenses are probated against the four line-haul carriers by car count, loads and empties, with the operating road (UP or SP&S preparing a joint facility invoice). This method of operation and responsibility for payment of expenses has existed since 1912 basically the same working relationship as now exists between this joint agency and Peninsula Terminal employees.

The Freight Station is located in Room 200 of the Livestock Exchange Building on North Marine Drive, renting office space from the Portland Union Stockyards. The office is open 7 days a week from 8:00 A. M. to 4:30 P. M. Peninsula Terminal's main office is in the same building, just down the hall.

This freight station handles the billing of out-bound shipments indicating the same on a "pull list" for the Peninsula Terminal. The freight station also handles interchange and switching statements from and to the Peninsula Terminal. Some waybills are revised (rated) and freight bills are prepared for a few non-credit customers but for the most part accounting is performed by a zone accounting office of a trunk line. In addition, this freight station also prepares various reports for the operating, car accounting and freight accounting departments of the various railroads.

Each car destined for North Portland is interchanged UP or SP&S, GN and NP to the Peninsula Terminal while forwarded cars are interchanged Peninsula Terminal to UP or SP&S, GN and NP. This is done daily with interchange reports going to the UP and SP&S car accounting offices. A forwarded and received switching report is prepared daily with a recap made for the Peninsula Terminal four times each month. A switching statement is made for each of the four roads and the Peninsula Terminal prepares an invoice against each road for both received and forwarded switching. In addition, on any shipment received or forwarded via the South Pacific, Peninsula Terminal prepares a switching statement and invoice for SP payment direct.

Each month the SP&S and UP Car Accounts Office prepares a Per Diem Statement for the Peninsula Terminal. This bills the Peninsula Terminal per diem for each day in excess of an arbitrary 5 days. The Peninsula Terminal will then reclaim for each day in excess of the five they do not deem chargeable, such as, for example, cars held for line clearance, claims for empty equipment arriving prior to ordered date, etc.

As a joint station, this office cannot recommend routings to shippers. All of the shippers on the Peninsula Terminal understand that we will not take a car order that is open, that a specific route must be given. For that reason, as well as car service orders, we do not keep any equipment available for prospective loading but order cars from the Car Distributors of the various roads. Each shipper must anticipate his needs at least 24 hours in advance. This does not preclude the fact that, for an emergency shipment, we will request special handling or furnish a car made empty at one of the other industries.

There are approximately 7600 to 8600 cars interchanged through North Portland each year with about 39 percent being Peninsula Terminal business. The major portion of business handled is between the SP&S-GN-NP and the UP for industries located in Zone 6 of the Portland Switching District. None of this business is through freight or cars being passed. All cars are either consigned to or being billed from an industry in the area.

Because of the interchange taking place between the trunk lines themselves and with Peninsula Terminal, at the North Portland yard, a yard office is maintained in addition to the Freight Station. The Yard Office is located at the east end of the yard and has 4 employees, one clerk on duty each shift 7 days per week, 24 hours per day. The Yard Office and yard tracks are jointly owned and are maintained by SP&S and Union Pacific under terms of a supplement to the 1912 agreement establishing the North Portland Freight Station. The four clerks at the Yard Office are Union Pacific employees while the four clerks at the Freight Station are employed by the SP&S. Any temporary vacancy, under 30 days, is filled by the operating road but permanent vacancies are filled by road to

whom the position is assigned. As it pertains to this case, the function of the Yard Office is to list the inbound train to the Peninsula Terminal on a copy of the delivery list which gives Peninsula Terminal Switch Foreman disposition of the cars. The yard also receives car orders from the industries, telephones the car order to road concerned (either UP, SP&S, GN and NP) and, on arrival of empty equipment, gives the Peninsula Terminal copy of car order for car disposition. This is also used by the Peninsula Terminal for demurrage purposes. If necessary, and the freight office is closed, the Yard Office will prepare outbound billing. The Yard Office is also responsible for handling reports on cars interchanged between the trunk line at North Portland.

I have a great deal of contact with the shippers in North Portland and believe that because of the excellent working relationship between Peninsula and the applicants that acquisition of Peninsula by Union Pacific and SP&S would best serve the needs of the area for rail transportation.

EXHIBIT 26

STATEMENT OF N. S. WESTERGARD

My name is N. S. Westergard, and I am vice president and general manager of the S. P. & S. Railway Company. My headquarters and place of residence is Portland, Oregon. I am here on behalf of the applicants, Spokane, Portland and Seattle Railway Company and the Union Pacific Railroad Company, in support of their joint application to acquire control of the Peninsula Terminal Company through the ownership of its outstanding stock.

The Peninsula Terminal's properties comprise 13.17 acres of land, and 3.79 miles of main and secondary tracks. Included in the latter are 0.8 miles of trackage in which they share a one-half ownership jointly with the applicant companies and Northern Pacific Railway. This jointly owned track consists of two tracks of the 4-track yard known as the North Portland interchange. This interchange yard is now used and has been for many years by S. P. & S., G. N. and N. P. on the one hand and Union Pacific on the other for interchange of traffic, and also between all four of these lines and Peninsula Terminal as well. These tracks provide a direct physical connection between S. P. & S.-N. P. owned main line and/or Union Pacific owned main line on the one hand with wholly owned trackage of Peninsula Terminal. Portions of this trackage were constructed as early as 1908, and the present layout in general has existed since 1931.

Attached hereto marked Exhibit NSW 1—is a map showing the track layout of both Peninsula Terminal and the North Portland interchange tracks with connecting lines of S. P. & S. and Union Pacific.

By way of background information from our records and other available data, the main line railroad jointly owned by Spokane, Portland & Seattle and Northern Pacific Railway between Vancouver, Washington and Willbridge, Oregon was constructed during the years 1906 through 1908. During this same period there was considerable industrial construction including a stockyard and a meat packing plant in the so-called North Portland industrial district on the south side of Oregon Slough adjacent to the new railroad.

An industrial spur connection to reach this development was built coincident with the main track construction. The following year the Oregon-Washington Railroad & Navigation Co. (now referred to as Union Pacific) built their line from Albina to a connection with the S. P. & S. main line in the same vicinity which was given the name of North Portland Junction. About two years later the OWR&N constructed a bypass connection to reach the industrial lead from their main track without entering onto the S. P. & S. main track.

The two railroads shared jointly in the ownership of this industrial connection, and initially each performed their own switching in an overlapping or duplicating service. However, as early as 1915 they had agreed that each company would perform all switching for both during alternating two-year intervals. The same principle was adopted for responsibility of the joint North Portland Freight Station which was established under a formal agreement dated June 1, 1912 and is still followed today.

Peninsula Terminal Co. was organized in 1918, and constructed trackage for the express purpose of furnishing switching service to the stockyards and to industries in the North Portland industrial district. Switching opera-

tions, however, continued to be carried on jointly under lease by the S. P. & S. and the Union Pacific at least until October 18, 1930 when Peninsula was granted I. C. C. approval under Docket No. 8389, without objection from the lessees, to operate as a terminal switching railroad.

With commencement of switching by Peninsula, additional interchange tracks were constructed to form the four track yard referred to above. The S. P. & S. together with the N. P. share an equal ownership with the Union Pacific in all four tracks, and as previously mentioned, divide a half ownership in two of the tracks with Peninsula Terminal Company.

With such an extended close association, it is readily understandable that consideration was given on several occasions to acquisition of Peninsula by one or another of the applicants. One such occurrence came in 1963 when owners of Peninsula indicated to S. P. & S. that they were becoming disinterested in their various railroad holdings and operations and proffered a copy of recent appraisal of the Peninsula properties as a proposed basis of sale.

No affirmative decision was reached during those negotiations, and the subject was dropped for the time. However, it came up for reconsideration again in 1966 when principals of the Peninsula Terminal Company reaffirmed their willingness to sell. The initial negotiations in this instance were again carried on with principals of Peninsula by those of the S. P. & S. only.

When the Union Pacific was informed of this, it promptly requested that it be allowed to participate jointly in ownership of Peninsula's capital stock. The S. P. & S. consented and the two railroads further agreed that upon acquisition, the operation should be continued by Peninsula under alternating periods of owner responsibility.

thus conforming with the established pattern for the North Portland joint agency. The basic understanding was that the acquisition should be through purchase of all of Peninsula's 1,500 shares of outstanding stock at a price based on the February 1963 valuation figure of \$291,210, adjusted for betterments and retirements up to date; that it would be a cash transaction, subject to approval of the Interstate Commerce Commission. These and other basic conditions were to be provided in a formal purchase contract submitted by the purchasers.

In conformance with this understanding with the United Stockyards Corporation, a joint purchase contract was executed under date of February 28, 1967. A copy is included as a part of our application and identified as Exhibit #7. This agreement was reached through free negotiations and in my opinion its terms are fair to all parties. The properties which we propose to acquire in this transaction are all of the land, trackage, equipment and facilities of Peninsula and which are listed in the appraisal included as Exhibit #14 of the application, except for the two steam locomotives listed on page 4.

A map identified as Exhibit #6 is included with the application. It shows the trackage of Peninsula Terminal and their relationship to the lines of the applicants. However, the map just presented as Exhibit NSWI- updates and clarifies Exhibit #6 to the application and should be considered in lieu of that exhibit.

A brief outline of the usage made of the jointly owned and operated North Portland interchange track is as follows: Track #1, which is the most southeasterly in the interchange yard, is the Union Pacific receiving track for delivery of cars by Peninsula and S. P. & S. which also include G. N. and N. P. The next, Track #2, is the S. P.

& S. receiving track for cars from Peninsula and Union Pacific. Next, #3, is the open or running track. The last one over, #4, is for receiving by Peninsula from Union Pacific and S. P. & S. for itself and parent companies. This procedure is fully provided for by contract between the parties, which also provides for the apportionment of maintenance expense and is referred to in Exhibit C to Exhibit #7 of our application.

The usual practice is for S. P. & S. to make daily deliveries at 2:30 A. M. and 11:30 A. M. and pick up 9:30 A. M. and 6:00 P. M. Service is thereby available to or from industries located on Peninsula to points on the S. P. & S. system, its parent lines and connecting carriers. Attached hereto is Exhibit NSW 2—showing the S. P. & S. system lines and their connections.

The Union Pacific both delivers and picks up at 6:30 A. M. and 2:30 P. M. The joint U. P.-S. P. & S. freight yard office, whose functions will be described more fully by another witness, furnishes Peninsula a list of cars so delivered including their industry consignment or destination. Likewise, the U. P.-S. P. & S. joint agent receives instructions direct from the industries on outbound shipments or release of empty cars. This information then is also given to Peninsula together with instructions as to the proper trunk receiving track to which they should be delivered.

Peninsula Terminal's principal operation is in the switching of cars between these trunk line interchange tracks and the various industries. To provide this service, they regularly work two switch engine shifts 9:00 A. M. to 5:00 P. M. and 9:00 P. M. to 5:00 A. M., seven days per week. Their charges are billed direct against the line haul carriers on a division sheet basis. In addition, they

issue published tariff rates for loading, unloading and servicing of livestock, and also a rate for intraplant industrial switching.

Throughout our negotiations, and it remains today as stated in the application, it is our intention to continue the corporate identity of Peninsula Terminal and its operation and compensation as a separate carrier with the Peninsula employees. In fact, it will be noted that under Section 10 of the purchase contract, provision is made to even continue the seller's present management arrangement.

It is, of course, logical that certain of the services contemplated therein can be assumed by the appropriate departments of the respective new owners, thus making Peninsula operation more economical. In fact, our joint management plan now under consideration, proposes to designate the responsibility to one or the other of the new owners staffs. This, however, would pertain only to supervision insofar as operations and the regular employees of Peninsula are concerned.

At page 21 of our application, we have stated that applicants have no objection to the Commission's prescribing conditions for the protection of employees on the same basis as set forth in *Chicago & N. W. Ry. Co. Merger*, 261 ICC 672. These conditions provide in effect that during the period of four years from the effective date of an order approving the application of the Union Pacific and S. P. & S. to acquire control of Peninsula, the transaction will not result in employees of Peninsula being in a worse position with respect to their employment except that such protection will not continue for a longer period following the effective date of the order than the period during which the employee was employed by Peninsula prior to such

effective date. Applicants repeat their willingness to accept these conditions in any order issued by the Commission herein.

I think it is apparent from the foregoing, the close working relationship that has existed between the two applicant railroads and Peninsula since its inception. During those years Peninsula has conducted its business fairly and provided its customers with good service. It is essential to these customers and, I believe, in the public interest that the service be continued. It follows then that because the owners of Peninsula desire to sell the properties and get out of the railroad business, established full-time railroad operators are their most logical successors. Certainly because of the close relationship in the past and into the foreseeable future the applicants Union Pacific and S. P. & S. are the most logical to assume it.

The experience and the capability of the applicants to continue the operation at an equal or higher level of service is unquestioned. I state positively here that we fully intend to do this. In this connection, I would also call your attention to the interest and certain responsibility of Northern Pacific and Great Northern in the proposed acquisition. Exhibit #10 to our application is intended to show this relationship. The Northern Pacific and Great Northern share an equal ownership in all the outstanding stock of the Oregon Electric Railway and Oregon Trunk Railway.

In addition to the benefit of experience this represents, it is obvious that with the investment in ownership, the applicants will focus their attention even more to North Portland and that added capital could be made available to protect those interests.

Reference is made in our application to extending the services of Peninsula Terminal Company into the Port of Portland's Rivergate industrial area. In fact, the Crown Zellerbach pole yard, which is located within that area, is presently being served by Peninsula and, of course, service will be continued under acquisition by the applicants. However, the questions of whether, when and how far such operations will extend into that area are problematical at this time.

We realize the existing Peninsula trackage has serious deficiencies due to excessively heavy curvature, impaired clearances and low standard track structure. In my opinion, sooner or later, with industrial growth in Rivergate, extensive expenditures for alternation of Peninsula trackage will be necessary in order to adequately serve the area. In fact, it may prove more feasible, even necessary, to serve it by new track access direct from the S. P. & S. mainline. In such event, Union Pacific and S. P. & S. have already given the Port written assurance that we would provide joint service similar to that being provided now via another connection into the Southwest part of Rivergate.

The application of Southern Pacific request track user rights over Peninsula as well as inclusion in ownership. Such use of Peninsula trackage would be impractical, in fact impossible in my opinion, with the 1000-1500 H. P. type switch locomotives in common use by Southern Pacific. In addition to the inefficiency and expense, duplicated service can be a handicap rather than an asset to shippers due to disturbing their loading operations.

Both Southern Pacific and Milwaukee have requested user rights over the jointly owned North Portland interchange tracks to connect with Peninsula. I believe such operations would require construction of two additional

interchange tracks similar to those described earlier. Under the existing arrangements for the handling of traffic of Great Northern and Northern Pacific and of the Southern Pacific and Milwaukee as well, all cars of these carriers are now being interchanged between the northern lines and Union Pacific and between all lines and Peninsula through the North Portland interchange yard. The great Northern and Northern Pacific cars are handled via S. P. & S. under a contract arrangement and the Southern Pacific and Milwaukee cars are handled by both S. P. & S. and Union Pacific on through routes and joint rates. Should Southern Pacific and Milwaukee acquire rights over the North Portland interchange trackage, their operation of power units would make separate interchange tracks mandatory for handling of their own traffic. This would be an unwarranted construction of extra track which is duplicative of facilities already handling this business. Milwaukee and Southern Pacific access to the North Portland interchange will not in itself create any new business but merely spread existing traffic among more companies for handling between North Portland and various origins and destinations.

It would be uneconomical and wasteful to furnish more train crews, power units and back-up personnel to handle traffic which is presently handled adequately enough by Southern Pacific and Milwaukee with applicants.

As for the proposed Southern Pacific and Milwaukee inclusion in ownership, Peninsula is a small line with only a few shippers. Its gross revenue is approximately \$100,000 a year. Both Milwaukee and Southern Pacific can, and now do share in traffic originating and terminating at Peninsula industries, and their ownership of an interest in this line will in no way benefit the public. For these reasons it is our position that neither the Milwaukee nor the

Southern Pacific should be included as owners of Peninsula or be given trackage rights to reach and/or operate on the property of Peninsula.

In order, however, for the Milwaukee and Southern Pacific to continue in their participation in traffic in and from Peninsula, the applicants are prepared to offer to these carriers the routing conditions which the I. C. C. has considered standard in Sec. 5(2) proceedings, to wit:

- (1) Upon consummation of the acquisition, Peninsula shall maintain and keep open all routes and channels of trade via existing junctions and gateways unless and until otherwise authorized by the Commission.
- (2) The present neutrality of handling traffic inbound and outbound to Peninsula by S. P. & S. and Union Pacific shall be continued so as to permit equal opportunity for service to and from all lines reaching Peninsula through their connections with Union Pacific, S. P. & S. and its parent lines, without discrimination as to routing or movement of traffic and without discrimination in arrangement of schedules or otherwise.
- (3) The present traffic and operating relationships existing between Peninsula on the one hand and all lines reaching Peninsula through Union Pacific, S. P. & S. or its parent lines on the other, shall be continued insofar as such matters are within the control of Union Pacific, S. P. & S. or its parent lines.
- (4) Union Pacific, S. P. & S. and its parent lines shall accept, handle and deliver all cars inbound and outbound, loaded and empty, without discrimination, in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.
- (5) Union Pacific, S. P. & S. or its parent lines shall not do anything to restrain or curtail the right of industries, now located on Peninsula, to route traffic over any and all existing routes and gateways.
- (6) Any party or person

having an interest in the subject matter may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction of the Commission may be retained to reopen this proceeding on the Commission's own motion for the same purpose. These standard conditions may be found in numerous Commission decisions including *Southern Pacific Company—Merger—Pacific Electric Railway Company, Finance Docket No. 23011, 327 ICC 38, 40 (1964)*.

EXHIBIT NO. 158-

SMITH

LAKE

NORTH PORTLAND JCT.
Vic Station Map

**SUPREME
PEARLITE**

STAUFFER
CHEMICAL

WALLANETTE
Wood Prod

~~Pacific Coast~~

NORTH PORTLAND

MARRIAGE

Mission:
A. Duzdane
Mosses N

OREGON

~~CONFIDENTIAL~~

EXHIBIT 27.

STATEMENT OF GEORGE H. BAKER.

My name is George H. Baker and I am the General Manager of the Northwestern District of the Union Pacific Railroad Company and am in charge of operational matters of the Union Pacific in the states of Oregon, Washington, Idaho and the extreme portion of Wyoming west of Granger. My headquarters are here in Portland Oregon. I have been employed in various operating department positions for Union Pacific for the past 28 years. Prior to my becoming General Manager in September, 1964, I was General Superintendent of the Eastern District of our company with headquarters in Cheyenne, Wyoming, and prior to that time I was Superintendent of the Oregon Division of our railroad which covers lines in Oregon and Washington and portions of Idaho. In that latter position my headquarters were at the Albina Yard in Portland.

In my various capacities in the Operating Department of Union Pacific Railroad I have worked on and participated in the management of many jointly-owned companies similar to the one involved in our application. I have reviewed the testimony given in this case by Mr. N. S. Westergard, Vice-President and General Manager of SP&S, concerning the facilities involved in this case, and concur in what he has said..

I wish to plainly state the position of my company in support of our joint application with the SP&S and in opposition to the petitions for inclusion and applications for user rights which have been filed by the Milwaukee and Southern Pacific in this proceeding. The granting of the joint application for acquisition by Union Pacific and SP&S of Peninsula Terminal Company will permit the continuation of Peninsula Terminal as a separate switching

company by the trunk line carriers owning trackage in the North Portland interchange yard. It will assure industries in North Portland that railroads now operating the joint freight station and yard office for interchange of their own traffic will extend their responsibility to include the continuation of switching service at North Portland.

Ownership of Peninsula should be limited to Union Pacific and SP&S not only because of their existing adjacent facilities and many years of service in the area but also because of the management problems which could result from a 3 or 4-way ownership. Union Pacific and SP&S have given careful consideration to dividing of management responsibilities between various departments of these companies much in the way we now operate the North Portland freight station with Peninsula remaining as an independent company. If SP and Milwaukee, or either of them, are permitted to share in ownership of 3.79 miles of railroad, I believe its management would become difficult and indecisive and that service to the public could suffer. Our joint ownership of Peninsula Terminal will likewise assure a stable terminal service to industries locating in those parts of the Rivergate Industrial District which are or could be served from existing Peninsula trackage without unnecessary duplication of service, personnel, facilities or equipment.

Under ideal multi-line railroad operations, when switching industries and interchanging traffic, a single carrier is designated as the switching line with as few delivering carriers as possible. This way the general public receives the best service and a minimum of disruption to its plant and the railroads involved are put to the least expense. This concept has worked well in North Portland with Peninsula Terminal switching the 14 industries on its line with small power units to fit the sharp track curvatures, rail

weight and maintenance level of the roadbed and a crew consist to fit the special service it renders. Further, the limited number of carriers interchanging with Peninsula and each other at North Portland has kept the size of the yard facility and number of station and yard employees to a minimum. We believe this concept should be maintained by permitting SP&S and Union Pacific to acquire Peninsula Terminal.

My opposition to Southern Pacific's request for rights over Union Pacific and Peninsula Terminal trackage is based on the congestion and economically wasteful operating conditions which granting of this duplication of service would foster. Southern Pacific wants user rights directly through our Albina Yard which we already use to capacity. Operations of SP trains through Albina and especially over our track at the north entrance to Albina is not practical because of the many yard, switch and train movements we already have and the delays we experience because of these heavy movements. SP has access to Peninsula through the tariffs published by the carriers involved in this proceeding. SP service can be continued in this same manner under applicants' control of Peninsula and can be extended to industries served from Peninsula in the Rivergate Industrial District.

The Milwaukee does not now serve Portland. My company opposes their access to Portland, and we also oppose their attempt to obtain trackage rights over the North Portland interchange and an interest in Peninsula Terminal as being contrary to the public interest. With the many years of joint operation in North Portland by SP&S and Union Pacific, we believe the Milwaukee's interjection would disrupt our present interchange operation and add no benefit to the public. Milwaukee now has access through tariff publications and its additional train movements

into the North Portland interchange, if its requests are granted, will furnish no new public service which is not now or could otherwise be available if Milwaukee is admitted to Portland.

EXHIBIT 28.

STATEMENT OF R. A. LAWRENCE.

My name is Robert A. Lawrence. I am traffic manager of the Spokane, Portland and Seattle Railway Company. I have been employed by the S. P. & S. for 35 years, the last 31 years in the traffic department. I have been traffic manager since August 1962 and have under my jurisdiction the freight and passenger marketing and pricing as well as industrial development. The S. P. & S. is the wholly owned subsidiary of the Northern Pacific and Great Northern Railway Systems. My testimony is in support of the acquisition by stock purchase of the Peninsula Terminal Company jointly by the S. P. & S. and the Union Pacific Railroad, and that we as the new owners be allowed to continue operation of it as a separate corporation.

At the present time the Peninsula Terminal Company serves the Portland Union Stockyards and thirteen other industries located on their trackage at North Portland, Oregon. These industries include a pole-piling operation, paper converting plant for coating wrappings, two industrial-agricultural chemical plants, hide and wool processing, two lumber processing plants, manufacture of dry kilns, conveyors, and wood racks, distribution and packaging of petroleum products, anti-freeze, and tires, manufacture of shingles and woodfeathers, distribution of rock building materials, and processing of light rock aggregate. In addition, there is a limited amount of team track business

The Peninsula Terminal Company maintains no traffic solicitation or service force, and the traffic personnel of the railroads solicit direct from the industries tonnage that may move via their lines. Car tracing, transit, car orders, claim matters, quotation of rates are all normally handled by personnel of the joint Great Northern, Northern Pacific, S. P. & S., and Union Pacific agency. If added assistance is needed on any of these matters, the shippers may call the traffic departments of the lines involved for the needed help. Also, normally, these same shippers deal either directly with the rate bureau involved, or with one of the on-line railroad traffic department's rate personnel for the establishment of any new rates or routes. The Peninsula Terminal Company is in no position to give the shipper these needed services.

Mr. McIntosh of the Union Pacific has expressed clearly the rate policies of the applicants in regard to Peninsula Terminal in the event the commission approved the application, and also our interpretation of agreements reached through the Portland switching study.

Attached hereto marked Exhibit RAL 1- is a copy of the agreement of October 24, 1966 between the Milwaukee Railroad and the Great Northern, Northern Pacific, Chicago, Burlington & Quincy Railroad, S. P. & S., and the new company, The Great Northern Pacific & Burlington Lines, Inc., granting to the Milwaukee certain conditions, effective upon the consummation of the Northern line merger in Finance Docket No. 21478. The S. P. & S. and its parent lines will observe and perform all provisions of this agreement including condition No. 2 which provides for the entry of the Milwaukee into Portland, and the granting to Milwaukee of trackage rights between Longview Junction and Portland.

The Milwaukee now reaches Peninsula Terminal through its connecting carriers and joint rates and routes. Existing rates, routes and channels of trade will not be affected by the proposed acquisition of Peninsula by applicants.

From a traffic as well as an operating standpoint applicants are in complete opposition to Milwaukee's proposed purchase of a one-third interest in Peninsula or access thereto. Peninsula is a small switching line of only 3.79 miles, and management by more than applicants is not required in the public interest.

For the same basic reasons we are also opposed to Southern Pacific ownership of an equal interest in Peninsula Terminal or its acquisition of trackage rights to serve North Portland. Southern Pacific now serves Peninsula industries through its connecting lines, and service through direct access is not required in order to afford the public adequate service.

Exhibit TER 1- presented by Peninsula shows carloads of commodities handled between 1960 and 1967. In further analyzing these figures, I have determined that during 1960 approximately 23% of the livestock receipts in and out of North Portland were via rail, while for 1967 they were approximately 2%. These decreases are due to better highways for truck distribution, lower rates on fresh meats and packing house products via truck and rail as compared to livestock movements, and the availability of both rail and truck mechanical refrigerators. This has caused the relocation of many slaughter houses and meat processing plants nearer the producing areas, and these same economic reasons undoubtedly contributed to Swift & Company's closure in the fall of 1966 of their North Portland slaughtering operations. This also resulted in

the Portland Union Stockyards changing from a commission yard to an auction yard in 1965, and the decision for the United Stockyard Company to lease these facilities to the Portland Livestock Market, Inc., the present auction firm, and thereby make continued ownership of Peninsula Terminal Company less attractive.

Figures on Exhibit TER 1- also show an overall decline in 1967 freight handled when compared to 1966 and prior years. I investigated this and determined that the low 1967 figures on other than livestock was due to the bankruptcy of one shipper in May 1967, decline in the pole and piling market, and the further phasing out of Swift & Company's operations. Our inquiries show a new business located at the site formerly used by the bankrupt firm, the take-over of an existing lumber operation by a more active rail user, and potential increase in car-loading from several other existing businesses. From these indications we estimate regardless of further decreases in livestock receipts that approximately 3,000 cars of traffic at this time would be average for Peninsula.

Applicant's lines furnish the line haul for approximately 79% of Peninsula traffic. In 1966, Peninsula handled 3,640 cars in connection with UP-SP&S-GN-NP and their connecting lines. The interchange between Peninsula and applicants was approximately 54% for S. P. & S. and parent lines and 46% Union Pacific. The great preponderance of traffic handled was routed via these lines with Southern Pacific sharing in only 20%, and Milwaukee in just over 1%.

In 1967 Peninsula handled 2,748 cars, with applicants' line haul tonnage being 82% of the traffic, while Southern Pacific routings dropped to 17% of the total and Milwaukee's remained the same.

The Port of Portland's Rivergate Industrial District consists of approximately 2,942 acres of property, and in September 1967 we received a copy of their report summarizing the planning study of the North Portland Peninsula, and the Rivergate Industrial District by their consultants, Daniel, Mann, Johnson, Mendenhall of Los Angeles, California. It took 18 months to prepare this comprehensive general plan of a 14 square mile Peninsula area including a precise master plan of the Port-owned Rivergate Industrial District.

The report recommends a rail system which connects with the S. P. & S. main line. It is possible to serve this area by alternative access routes including an extension of the trackage of Peninsula. Applicants have made no decision on proposals for access to Rivergate and can only state that as the area develops, they will provide adequate switching service into the area without discrimination as to service to the industries or charges to connecting lines.

Other available industrial properties adjacent to the Peninsula Terminal Company's trackage is limited. The West Delta Park area of 624 acres was purchased by the City of Portland during March 1959 through the General Service Administration. This area is located east of the S. P. & S. main line and south of the Peninsula Terminal Company's trackage. The property was purchased for recreational purposes on 50% of the appraised value with the understanding that if any portion of the property was utilized for industrial purposes, the city would have to pay 100% of the appraised value for the portion used, less 5% per year from time of purchase. This property could be served from Peninsula, if industries are located on it, however, the city's present plans call for an 18-hole golf course, golf driving range, drag strip, drag boat lagoon, boating and picnic areas, a motorcycle dirt oval

racetrack with grandstands, and parking areas, making use of this property for industrial purposes somewhat doubtful.

The Pacific International Livestock Building and grounds is now owned by Multnomah County, and their plans call for the relocation of the Multnomah County Fairgrounds here, with a race track and ample parking area. They have been in contact with adjacent property owners, including United Stockyards Company, for the purchase of a site of some 21.69 acres of their remaining property between the Peninsula trackage and West Delta Park. They are also showing an interest in the Peninsula team track area which borders the existing P. I. property on the south.

Swift & Company have phased out of their North Portland property all their operations except hide and wool processing and their agricultural chemical department.

With the desire of the United Stockyards to phase out all of their railroad operations, it appears that the S. P. & S. and Union Pacific are the logical railroads to continue the operation of the Peninsula Terminal Company as a separate corporation. Service is presently rendered at a superior level, and the applicants would be hard pressed to improve it. However, since the primary business of the applicants is the operation of railroads, it is obvious that public interest benefits should follow from their ownership of the Peninsula. With the benefits and knowledge of the applicants' various departments and their equipment, and with more interest in the properties through ownership, we believe we are the parties to continue the fine service of the Peninsula Terminal Company in a manner very similar to existing operations.

EXHIBIT 29.

STATEMENT OF R. W. McINTOSH.

My name is R. W. McIntosh. I am General Freight Agent—Rates & Divisions—Northwestern District, of the Union Pacific Railroad Company, and my business address is 751 Pittock Block, Portland, Oregon 97205.

Union Pacific operates in 13 states including Oregon and physically connects with Peninsula Terminal Co. at North Portland, Oregon. Exhibit (RWM-1) shows the extent of the Union Pacific trackage in this country.

North Portland, Oregon is the interchange junction with the Peninsula Terminal Company and a station on the GN, NP, SP&S and UPRR, within the Portland Switching District. The physical interchange of line-haul traffic moving via the SP&S or its parent companies, GN and NP, or their connecting lines is performed by the SP&S, and the physical interchange of line-haul traffic moving via the UPRR or its connecting lines is performed by the UPRR. Presently, the carriers performing line-haul service in connection with Peninsula traffic compensate the Peninsula Terminal Company according to agreed bases of divisions. The Peninsula Terminal Company's divisions for services performed are established by Joint Division Sheet 8-R in connection with traffic handled via Great Northern, Northern Pacific, SP&S, Union Pacific and connections.

The present Division Sheet 8-R was issued by North Pacific Coast Freight Bureau, Seattle, Washington, effective July 1, 1964. Settlement for these charges is based upon switching statements prepared by the Joint Agent at North Portland. From these statements the Peninsula Terminal Company makes bills for the money due them to

the line-haul carriers who absorb these charges. This also includes bills to the Southern Pacific Company for traffic handled between East Portland interchange and North Portland via the Union Pacific, and between Portland interchange and North Portland via the SP&S, Northern Pacific and Great Northern Railway Companies.

On traffic moving to and from the Southern Pacific Company via the SP&S, Northern Pacific, Great Northern, and Union Pacific from and to industries on the Peninsula Terminal Company at North Portland, Oregon, the Southern Pacific Company absorbs the Peninsula Terminal Company's switching division. Likewise, on traffic in which Milwaukee participates through joint routing, no switching charges are passed on to any industry.

Applicants propose to maintain the present rail rate making policies and permit those line-haul carriers not having a physical interchange with the Peninsula Terminal Company at North Portland, Oregon to reach industries on the latter's line through joint rates or routes to the same extent as such rates and routes exist today.

Rail carriers serving North Portland, Oregon, have established local and joint rates from or to transcontinental territory and west of transcontinental territory and, as future requests for the establishment of rates are received from industries presently located or subsequently locating on the Peninsula Terminal Company, it will be the policy of the applicants in acting upon such requests not to discriminate or show any partiality toward connecting rail lines.

At the request of the Port of Portland and Commission of Public Docks, a Railroad Presidents Conference was held in Portland on June 20, 1967 to give consideration of eliminating non-competitive switching charges to or from

industries located on Port property at Swan Island (Albina) and the Rivergate Industrial area to encourage development of their properties.

The Presidents of the railroads serving the North Pacific Coast Territory, on November 1, 1967, informed all interested parties that an agreement has been reached to establish a single basis of switching charges at all common points within the states of Northern Idaho, Oregon and Washington on carload traffic, and switching charges will be absorbed by the line-haul carriers with two exceptions: The first exception is that a minimum line-haul revenue of \$100.00 per car after absorption must be maintained. The second is that switching charges will not be absorbed in instances where tariff rate items specifically exclude such absorptions. The latter exception reserves the carriers the right to publish low rates to meet other competitive modes of transportation.

When the proposed arrangement is implemented, all industries within the Portland Switching District, which includes Port property as well as the area served by the Peninsula Terminal Company and all the other common points in the North Pacific Coast Territory, will be on a competitive relationship and except as in the two instances just noted, all switch charges will be absorbed by the carriers. As it stands now, all Peninsula Terminal switch charges are absorbed by the line-haul carriers.

On behalf of Union Pacific, I wish to state that our position is in complete opposition to the Milwaukee Road acquiring an interest in the Peninsula Terminal Company, also to the Southern Pacific's amended petition in intervention for inclusion to become an equal owner and acquire bridge trackage rights over applicant UP's main line and terminal trackage between Peninsula Terminal Company

and Southern Pacific-Union Pacific track connection at East Portland, Oregon.

Union Pacific also opposes SP's application of similar rights in F. D. Nos. 24890 and 24891. Industries located on the Peninsula Terminal Company have for many years maintained open channels of trade under existing rates and routes. It is our position under the operation proposed for Peninsula that all industries will be adequately served. The Milwaukee Road and Southern Pacific should only be permitted to participate in traffic from or to these industries through present or proposed rate application, which is the recognized rate-making method of all rail carriers not physically serving any respective area.

EXHIBIT NO. RWM-1

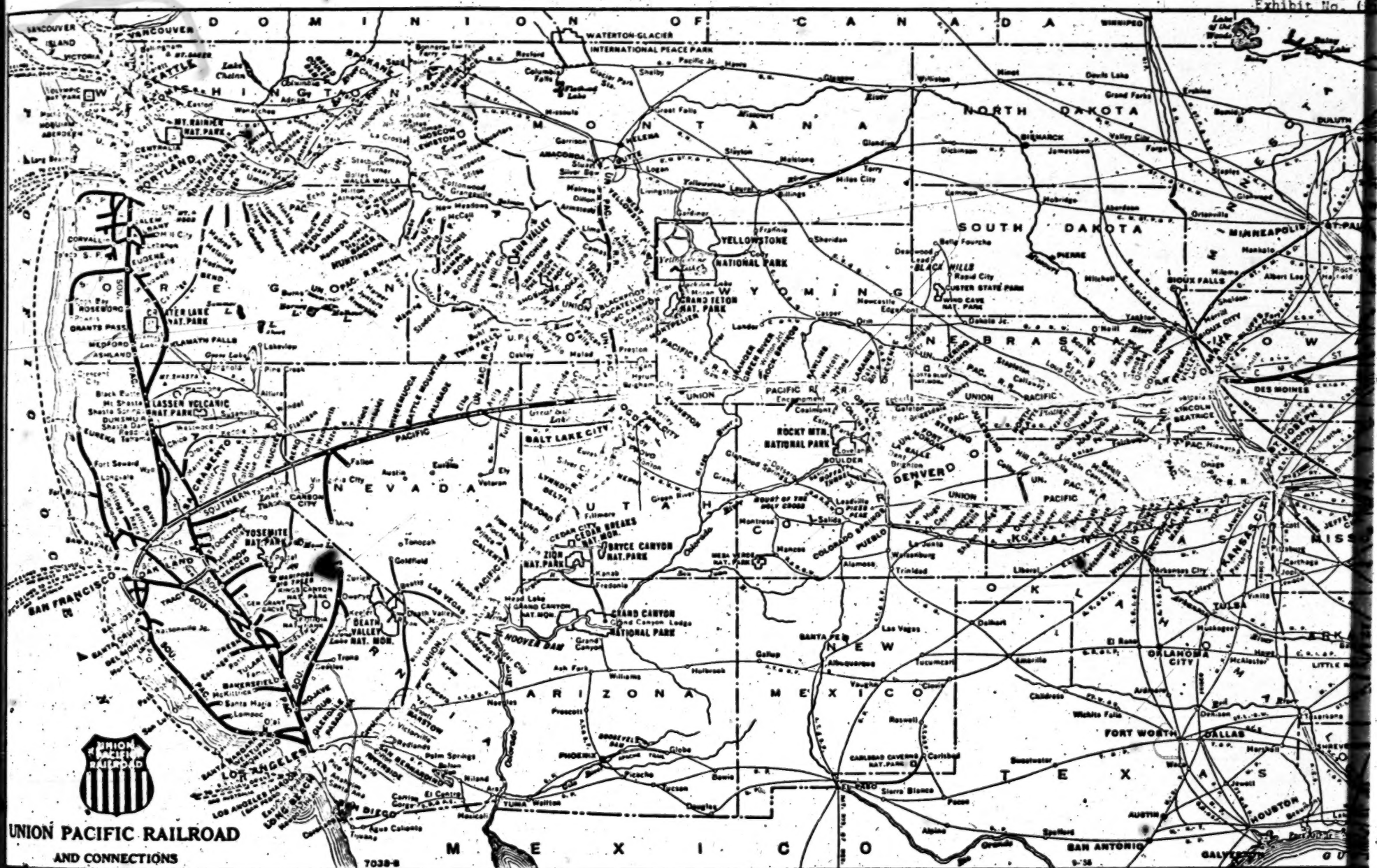
ICC Finance D
Exhibit No. 6

EXHIBIT NO. RWM-1

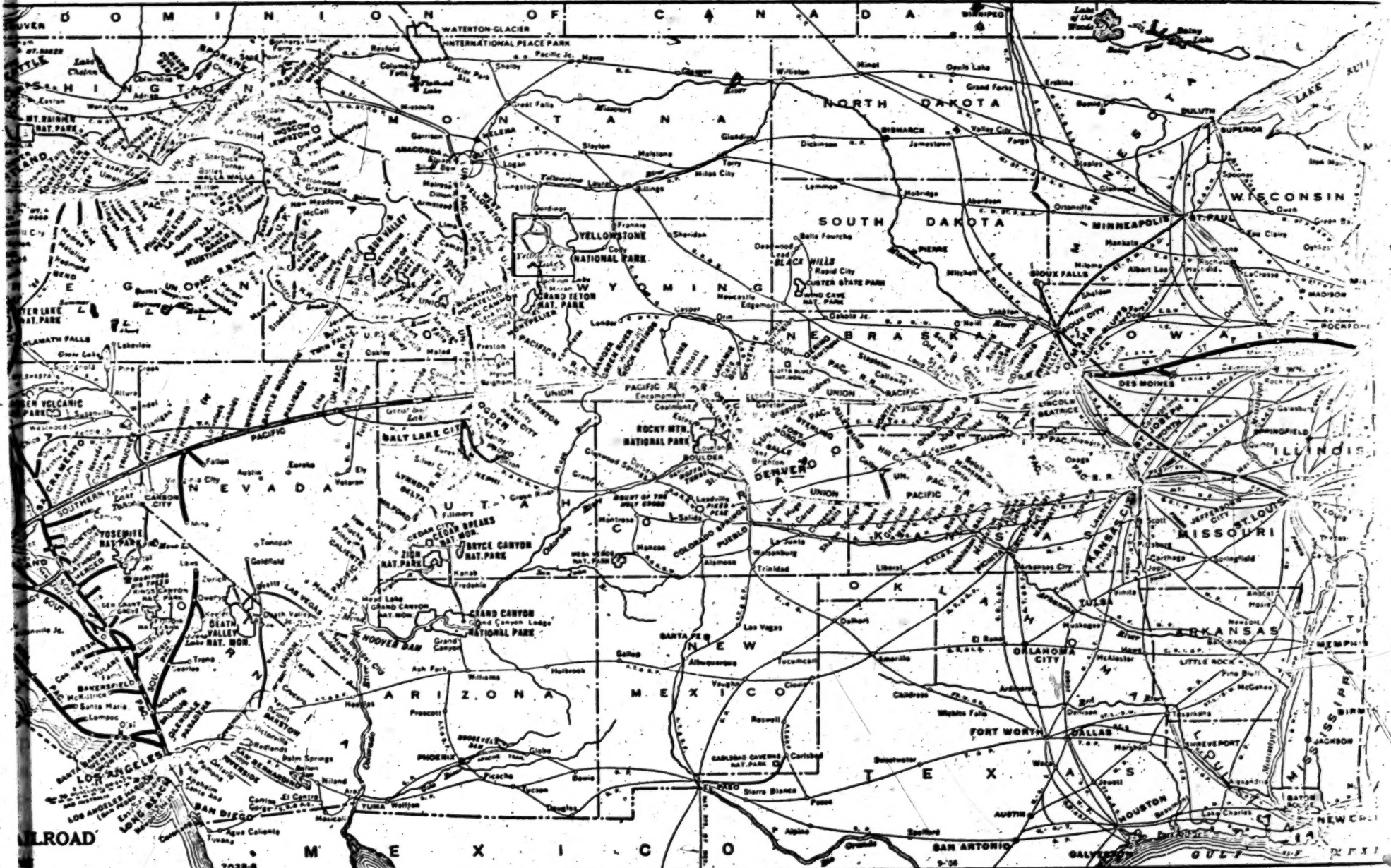
ICC Finance Docket No. 24575
Exhibit No. 157-1

EXHIBIT 31.

STATEMENT OF A. O. BARTELL.

My name is A. O. Bartell, and I am owner of Serendip Industrial Minerals of Portland, Oregon. Our company is located on Peninsula Terminal Company trackage in North Portland, Oregon, and is engaged in the production, processing, jobbing and sales of industrial mineral products. These products include building materials as well as stone used as flux by the electro-metals industry.

In a normal year we will receive approximately 30 cars of stone material, used in building, at our North Portland site for further processing such as crushing and sizing and packaging, or for the direct sale and delivery to job-sites in the area. We will also handle approximately 30 carloads of flux stone moving directly to the plant site of our customers via rail. Flux stone is used for the removal of impurities as part of the refining process of metals.

Nearly all of our supply of rock comes from Canada and the area north of Spokane in the State of Washington. The routings normally are via the northern lines for delivery to Peninsula Terminal as the final carrier in the route. We are therefore dependent upon the SP&S, and its parents, for rail service and the hopper cars used in transporting our supplies.

The office of the joint agent of Union Pacific and SP&S is in North Portland just a block from our plant site. This close relationship has resulted in sympathetic service that has been very helpful to our small but growing company. This relationship would, of course, be strengthened by the acquisition of Peninsula Terminal by the two-trunk lines, Union Pacific and SP&S who also handle our shipments. We feel the fewer the "cooks in the broth" the easier our problems will be.

• We are in the process of bidding on the decorative aggregate for the new Georgia-Pacific Building at Portland and estimate that some 15,000 tons of inbound material will be needed if successful in our proposal. This would involve 250 carloads of inbound material, mostly from Meade, Washington to our North Portland site. We believe that our interests would best be served by having the application of SP&S and Union Pacific approved and, therefore, support it.

* * * *

EXHIBIT 32

STATEMENT OF MAYNARD COCHRAN

My name is Maynard Cochran and I am the owner of Willamette Wood Products, Inc., located on the Peninsula Terminal Company in North Portland, Oregon. My company is in the "cut stock" business making stock for baby cribs, casket liners, wooden toys and other similar items. My plant is located on a 2½ acre tract just west of the SP&S Main Line in North Portland, and I am served by Peninsula Terminal Railroad. My company averages one car a week of traffic originating at this location. Of these shipments approximately one-half are inbound from Omak, Washington and move on transit rates with the balance of the inbound raw material traveling via motor carrier.

I sell or supervise the sales of all products manufactured at our plant and have been dealing with many of my customers for a great many years. I have found that the service of Peninsula Terminal is very good. Requests for switching from my plant have been met in as little time as 15 minutes from the time I have called in a request for

switching. I rely on railroad service over routes presently available on the SP&S-NP-GN and UP and any of their connecting routes. I can foresee no need for an expansion of any of these routes, although my business in the future should be increasing from my Peninsula Terminal location as demands from my customers over the years have increased steadily. I support the application of UP and SP&S for the acquisition of Peninsula Terminal Company because I rely on these trunk line carriers for my line haul and believe that their ownership of the switching carrier serving my plant will insure continued good service. I understand that the Peninsula Terminal service will be rendered in the same manner as it is now and believe that because of the broader experience of the applicant lines in the railroad business, the availability of numerous experienced employees and financial strength of these lines as parents of Peninsula Terminal would be beneficial to my position. I strongly urge that the I. C. C. approve the application of these lines.

• • •

EXHIBIT 34

STATEMENT OF RICHARD B. KENNEDY

My name is Richard B. Kennedy and I am Secretary and Sales Manager of Morrison Oil Company. My company is served by Peninsula Terminal in North Portland. At that location I receive tank cars of oil, cans and tires via rail, anti-freeze via water with a transfer move via truck from St. Johns and in outbound shipments handle canned anti-freeze, packaged oils, brake fluids, etc.

My plant in North Portland is for the storing, warehousing and packaging of oils, anti-freeze, brake fluids, tires, etc. On an average I will receive and ship 50 to 55 cars via rail each year. My inbound moves are largely S. P. with a bridge movement via U. P. or SP&S to Peninsula Terminal. On outbound movements I cover the Butte-Billings-Missoula territory by rail. Existing routes and rates are available for all of my business and any expansion which may come in the future. My plant is set up to handle much more business and as the demand presents itself my production will increase to meet it.

My company supports the acquisition of Peninsula Terminal by U. P. and SP&S because it will strengthen the carrier which is responsible for the switching of my goods to these trunk lines. While Peninsula has always performed service extremely well, I understand that the present owner of Peninsula is not committed to continuing this service whereas I believe U. P. and SP&S are since railroading is their stock and trade. I can reach all sources of supply and markets for my products which are available via existing rail routes without penalty. With an ownership in Peninsula, the U. P. and SP&S should help develop new markets by keeping channels of trade open and encouraging growth in their territories. Therefore, I urge that the I. C. C. grant the application of these two trunk lines.

. . .

EXHIBIT 35

UNION PACIFIC RAILROAD COMPANY
and
SPOKANE, PORTLAND AND SEATTLE
RAILWAY COMPANY

Portland, Oregon

January 19, 1960

Mr. Dennis Lindsay, President
Port of Portland Commission
Swan Island
P. O. Box 4099
Portland 8, Oregon

Dear Mr. Lindsay:

*Ramsey Lake Development—
Dow Chemical Co.*

Following the conference held in the Port Commission office on January 13, representatives of the Union Pacific Railroad Company and of the Spokane, Portland and Seattle Railway Company held further conferences with respect to the problem of rail service to the Ramsey Lake area, which the Port of Portland intends to develop. As a result of these discussions the two railroad companies now submit the following proposal:

(1) For the purpose of this proposal, the "Ramsey Lake area" includes the area lying generally between the Willamette River on the west, the Willamette Meridian on the east, the Columbia River on the north, and on the south the proposed industry lead track hereinafter defined. The "Proposed Down Chemical Plant Site" refers to the area of approximately 100 acres located in the southwesterly corner of the property now owned by the Port of Portland, adjacent to the Bonneville Power Administration

right of way on the south and partially adjacent to the Willamette River on the west.

(2) The proposed industry lead track herein referred to has not been precisely surveyed, but in general will extend from a connection with Union Pacific's Barnes Yard approximately at the crossing of Swift Blvd., thence in a general northwesterly direction to the property of the City of Portland lying northerly of the right of way of the Bonneville Power Administration, thence in a westerly direction lying as closely as practicable to the southerly boundary of said property of the City of Portland, to the east line of the presently-owned property of the Port of Portland.

(3) The following proposal is contingent upon completion of negotiations with Dow Chemical Company, the purchase by that company of the proposed Dow Chemical Plant Site, and the commitment of that company to proceed immediately with the construction of a manufacturing plant located on such property of the general nature heretofore discussed between representatives of that company, the Port of Portland and the above-named railroad companies.

(4) Subject to the conditions stated in this proposal, Union Pacific will construct the proposed industry lead track, and Union Pacific and SP&S have agreed upon a satisfactory basis for sharing the cost thereof. Said track will be jointly owned by Union Pacific and SP&S, except as to the portion for which refund is to be made as provided in paragraph (9), which will be owned by the Port after refund is completed.

(5) Industries to be located on rail trackage on property to be developed by the Port of Portland in the Ramsey Lake area, including the proposed Dow Chemical site, will be served by both Union Pacific and SP&S in a manner

similar to that presently applying at Municipal Terminal No. 4, and will be switched by Union Pacific both for itself and for SP&S, which companies have agreed between themselves upon a satisfactory basis therefor.

(6) The City of Portland and Port of Portland, without charge, will provide necessary right of way for such lead track over property presently owned by the City of Portland, and borrow rights on its or their properties for necessary fill material.

(7) The City of Portland and Port of Portland will cooperate and assist in obtaining necessary right of way for such lead track over property not now owned by either the City, the Port or either of the railroad companies, including an easement or license over the right of way of the Bonneville Power Administration.

(8) The Port of Portland will construct and maintain at its own expense and in a manner satisfactory to Union Pacific, all necessary trackage on its presently-owned property, and on property which it may acquire in the future, and will reserve sufficient rights of way for the extension of trackage to serve the balance of the property to be developed by the Port in the Ramsey Lake area.

(9) The Port of Portland will refund to Union Pacific, for division between Union Pacific and SP&S upon a basis agreed upon between them, the cost of construction of the trackage upon property presently owned by the City of Portland northerly of the right of way of Bonneville Power Administration, such refund, if not made upon completion of construction, to be over a term of years to be agreed upon, with interest at the rate of 6% per annum on the unpaid balance. Union Pacific and SP&S will retain ownership of said portion of the lead track until full refund has been made, but maintenance of said portion shall be at the expense of the Port.

Union Pacific and SP&S will enter into a contract providing details as between themselves that need not concern the Port. However, the foregoing general outline should permit the Port to make a definite response to Dow Chemical Company by its deadline of January 20, 1960.

. . .

EXHIBIT 36.

UNION PACIFIC RAILROAD COMPANY
and
**SPOKANE, PORTLAND AND SEATTLE
RAILWAY COMPANY**
Portland, Oregon
May 25, 1960

The Port of Portland
Swan Island
P. O. Box 4099
Portland 8, Oregon

Gentlemen:

Ramsey Lake Development

This is in response to Mr. Winn's letter of April 6, 1960, requesting confirmation of the policy and agreement made concerning rail service to the Ramsey Lake Area at the time of the negotiations with Dow Chemical Company, and his letter of May 2, 1960, requesting immediate acquisition of right of way from Barnes Yard to the Bonneville right of way.

On January 19, 1960, these two companies jointly addressed a letter to Mr. Lindsay, President of the Port of Portland Commission, outlining a proposal for rail

service to the area in question. That proposal, of course, related only to the Dow Chemical transaction then under consideration, and which did not materialize.

~~However, we are authorized~~ to state that if another major industry, which will produce sufficient rail traffic to justify the investment, locates on Port property in the Ramsey Lake area, and if circumstances at that time are not substantially different from those obtaining at the time of the negotiations with Dow Chemical Company, those two railroads will provide rail service and joint rates to and from such industry on the same terms and conditions as set forth in our letter of January 19, 1960. In essence, our letter of January 19, 1960, adopted the same pattern of service for the Ramsey Lake area as exists at Municipal Terminal No. 4. In the event that the location of any such industry could more advantageously be served from SP&S trackage, rather than Union Pacific trackage, then Union Pacific would be granted access on terms corresponding to those by which SP&S would have access to the U. P. trackage referred to in the letter of January 19, 1960.

With respect to immediate acquisition of the proposed right of way from Barnes Yard to the Bonneville Power Administration property, we are now progressing the matter with out respective principals, and we will write to you further as soon as we have definite word.

EXHIBIT 38.

STATEMENT OF WILLIAM F. KRAUSE.

My name is William F. Krause. I am an Assistant General Traffic Manager of Crown Zellerbach Corporation, and am located at the company's headquarters at One Bush Street, San Francisco. I have held this title since September 1, 1955. My responsibility in this position is for corporate transportation pricing and related areas of activity such as plant locations and relocation studies, commodity classification determinations, and corporate representation before Carrier Bureaus and Regulatory bodies, both State and Federal. From July 12, 1948, and until October 1, 1953, as Assistant Traffic Manager, I had, in addition to the aforementioned responsibilities, the over-all responsibility for transportation operations under the direction of the corporate Traffic Manager.

Crown Zellerbach is the second largest producer of paper and paper articles in the United States. It also produces lumber, plywood and industrial chemicals. The largest concentration of the company's principal paper mills and converting facilities is centered in the greater Portland, Oregon area. The largest single distribution center for our Camas, Washington, Wauna and West Linn Oregon mills is located in the city of Portland, Oregon. This facility ships in excess of 1100 rail carloads per month. Because the company has recently completed the greatest expansion program of its production capabilities ever undertaken, with the general Portland area mills accounting for the largest share of its over-all corporate expansion, it is being forced to consider the expansion of its distribution complex (known as Waterway Terminals Co.), to the Rivergate Industrial area of North Portland. This area is mentioned at page 20 of the Application of Union

Pacific and Spokane, Portland and Seattle as an anticipated source of "future substantial new traffic and revenues".

Crown Zellerbach's facilities presently located on the Peninsula Terminal Company consist of a so-called Pole Yard and the North Portland Plant of its Flexible Packaging Division which is engaged, primarily, in various paper coating operations.

In addition, Crown has contracted to purchase approximately 44 acres of Swift & Company property lying adjacent to the North Portland Flexible Packaging Division property which will be served by the Peninsula Terminal Company.

A 200,000 square foot warehouse will be built, in whole or in part, on this property for use as the distribution facility for the Flexible Packaging Division plant, and also for the storage of inbound raw materials, as needed. Additionally, money has been appropriated for the construction of a plant on the Swift property for the production of printing inks under the jurisdiction of our Gaylord Container Division. The number of railroad cars handled by the Flexible Packaging Division at North Portland consisted of 365 cars for the 12-month period ending November 30, 1967.

For the same period, the Pole Yard made 177 shipments of Poles and Piling manufactured at this North Portland facility. A total of 638 rail cars were required for these shipments. Of this number, 246—65 foot drop-end gondola cars were required. These cars are in short supply,

The Peninsula Terminal Company does not own any freight cars. The Spokane, Portland and Seattle does not own any 65 foot drop-end gondola cars. However, its

parent companies; the Great Northern and Northern Pacific, collectively, own 73. The Union Pacific owns 246—65 foot drop-end gondola cars; the Southern Pacific 404 and The Milwaukee Road 63.

From the foregoing it is evident that Crown Zellerbach has a substantial interest in the railroad service to these areas. Speaking from the experience we have had at the Pole Yard, the present car supply has been less than satisfactory. Of the 177 shipments made during the twelve-months period ending November 30, 1967, 114 or 64% involved delays running from one day to twenty-six days in length. The average of all delays was $4\frac{1}{2}$ days per shipment.

It stands to reason that the more carriers giving single-line service to our plant, the better the opportunity we as a shipper will have to draw upon the reservoir of cars available and thereby minimize delays attributable to this factor.

In addition to minimizing the delay problem, allowing more carriers to serve our facilities in single-line service will result in less switching of cars with less handling of freight and consequently less likelihood of damage, less time in transit and in terminals, and easier tracing of shipments.

Also of extreme importance is the fact that single-line service guarantees a single-line rate and removes the question of whether or not, and to what extent, switching charges will be absorbed by the carriers not directly serving the facility.

It is the position of Crown Zellerbach, that its interest will be best served by joint ownership of Peninsula Terminal Company. It has been our experience that creation

of competitiveness among carriers in serving its facilities is vital to our interest.

Accordingly, Crown Zellerbach urges joint ownership of Peninsula Terminal Company by all four carriers who seek to share in its joint ownership and operation. It further urges that necessary trackage rights be granted to permit Southern Pacific and The Milwaukee Road to reach and make a physical connection with Peninsula Terminal Company whether or not the Commission approves joint ownership.

EXHIBIT 39.

THIS AGREEMENT, made this 26th day of May, 1967, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter collectively called "Union Company"), party of the first part, and SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, a Washington corporation (hereinafter called "Portland Company"), party of the second part,

WITNESSETH:

RECITALS:

1. The Port of Portland, a municipal corporation of the State of Oregon, has undertaken development of the so-called River Gate Industrial District, which at the present time lies generally in that area between the Willamette River on the west, the Willamette Meridian on the east, the Columbia River on the north and the Bonneville Power Administration right of way on the south, all in Township 2 North, Range 1 West of Willamette Meridian in Multnomah County, State of Oregon.

2. At the request of the Port, the parties hereto have jointly agreed to furnish rail service to said River Gate Industrial District by means of an industrial lead track to be constructed between Union Company's Barnes Yard and the said River Gate Industrial District. The parties hereto make this agreement for the purpose of stating the terms and conditions upon which they will severally discharge their joint obligation to the Port.

NOW THEREFORE, it is agreed by and between the parties as follows:

ARTICLE I

Section 1. There is attached hereto a map marked "Exhibit A" dated April 18, 1967, which map is by this reference made a part hereof. Said map illustrates in yellow color the track (including runaround track) to be constructed as herein provided by the parties hereto, and in green the track connecting therewith to be constructed by and at the expense of the Port of Portland.

Section 2. The Union Company shall acquire all necessary rights of way for the portion of said track shown yellow on Exhibit A (including runaround track) jointly in the names of the Union Company and the Portland Company. The Portland Company shall cooperate with the Union Company in the acquisition of said rights of way and shall pay one-half the cost thereof, either directly or by reimbursement to Union Company, which reimbursement shall be made promptly on rendition of bill or bills therefor.

Section 3. The Union Company shall construct the track (including runaround track) upon the rights of way acquired as aforesaid. The Portland Company shall reimburse the Union Company for one-half ($\frac{1}{2}$) the cost of said construction promptly on rendition of bill or bills

therefor, following which the Portland Company shall be equal joint owner with the Union Company of the track so constructed.

In the event and at such time as this agreement is terminated, Union Company may at its option remove the track material, paying to Portland Company one-half of the value of such salvaged material, after deducting cost of removal; or, if within sixty (60) days of receiving a request from Portland Company to remove such track material Union Company fails to do so, Portland Company may at its option remove the track material, paying to Union Company one-half of the value of such salvaged material, after deducting cost of removal.

Section 4. The Union Company will have the general control, management and administration of said track (including runaround track) and rights of way and will maintain and at all times keep the same in good condition and repair. The Union Company will also maintain the connecting track owned by the Port of Portland to the extent required by agreement between said Port and the parties hereto.

Section 5. Each party shall report to the taxing authorities for purposes of taxation its interests in said track and rights of way including runaround track and pay when due and before delinquent any and all taxes, assessments and governmental charges of whatsoever kind or nature levied upon or against its interest in said properties. Each party at its own expense shall obtain and carry such insurance as it desires upon its interest in said track and right of way.

Section 6. Neither party, without the written consent of the other party, shall with reference to all or any part of said track or rights of way including runaround track admit any nonparty to the use thereof.

ARTICLE II

Section 1. The Portland Company will deliver and receive its cars, loaded or empty, destined to or originating at said River Gate Industrial District, upon interchange tracks designated by Union Company's officers in the Union Company's Barnes Yard. The Union Company will switch the said cars without discrimination or unnecessary delay between said interchange tracks and said River Gate Industrial District.

Section 2. The reference to "cars of the Portland Company" shall include freight cars of the Northern Pacific Railway Company and Great Northern Railway Company, it being the purpose of this agreement to cover and include in the switching service herein arranged for, the cars of the said two companies last named. But it is understood that no loads or empties will be received in Union Company's Barnes Yard unless same be destined for delivery at the River Gate Industrial District or the City of Portland's Municipal Terminal No. 4, nor will the Union Company deliver any cars or loads to the Portland Company, the Northern Pacific Railway Company, or the Great Northern Railway Company in its said Barnes Yard, except such as originate at the River Gate Industrial District or said Municipal Terminal No. 4. Cars will not be placed or delivered by the Portland Company on said interchange tracks for delivery to said River Gate Industrial District or said Municipal Terminal No. 4 unless the industries at the River Gate Industrial District or said Terminal No. 4 are then prepared to accept such cars from the Union Company.

ARTICLE III

Section 1. The Portland Company agrees to furnish such cars as may be necessary for handling its business and the business of the Northern Pacific Railway Company and Great Northern Railway Company originating at the

said River Gate Industrial District. The Union Company will return all such cars received from shippers in the said River Gate Industrial District to the Portland Company on the aforesaid interchange tracks, without discrimination or unnecessary delay.

Section 2. All cars handled under this contract by the Union Company for the Portland Company and Northern Pacific Railway Company and Great Northern Railway Company shall be deemed at all times in the possession of the Portland Company, and such Company shall be solely liable for and shall pay any and all per diem, mileage or similar charges, if any, for the use of such cars, and shall collect for its own account any and all accruing demurrage.

ARTICLE IV

Section 1. The Portland Company for itself and for the Northern Pacific Railway Company and Great Northern Railway Company assumes all risk and damage on account of loss, injury, destruction or delay of cars or contents while same are under the control of the Union Company under this contract, and will indemnify and hold the Union Company harmless from any claim or claims made or prosecuted against the Union Company for any such loss, damage, injury, destruction or delay of said cars or contents while in the control of the Union Company hereunder.

ARTICLE V

Section 1. The Portland Company agrees to pay and the Union Company to accept for the services to be rendered by Union Company under this contract:

(a) A flat charge of Twelve Dollars (\$12.00) per car, whether loaded or empty, per movement either to or from said River Gate Industrial District;

(b) A proportion of all expenses incurred by the Union Company in the discharge of its obligation to maintain and repair the track, including the runaround track and the connecting track owned by the Port of Portland, which said proportion bears to the total of said expenses the same ratio which the number of Portland Company's cars (as hereinafter defined) handled hereunder in each calendar month bears to the whole number of cars handled to and from the River Gate Industrial District during the same period; and

(c) A proportion of all expenses incurred by the Union Company by reason of injuries to persons (whether employees of the Union Company or persons other than such employees) or by reason of damage to or destruction of fixed properties of the Union Company employed in the service rendered hereunder, or to its motive power while so employed, or by reason of damage to or destruction of property of third parties, when such injury, damage or destruction is caused by or results from services rendered hereunder, which said proportion bears to the total of said expenses the same ratio which the number of Portland Company's cars (as hereinafter defined) handled hereunder in each calendar month bears to the whole number of cars handled to and from the River Gate Industrial District during the same period.

Definitions: Whenever used in this Article V, the term "car" or "cars" shall not include engines and tenders; and the term "cars of the Portland Company" shall mean and include besides cars of Spokane, Portland and Seattle Railway Company, also cars of Northern Pacific Railway Company and Great Northern Railway Company.

Section 2. It is the intent of the parties that the charges stated in Section 1 of this article shall be the fair and

reasonable cost of the services for which said charges are made. At any time after six (6) months from the date hereof a redetermination and revision of said charges shall be made on the basis of the then actual experience of the Union Company in performing said services, if written notice and demand therefor shall be given by either party to the other. Said redetermined and revised charges shall be effective from and after the first day of the month next following the month in which said notice is given, unless otherwise agreed. If the parties do not redetermine and revise said charges within the six (6) months immediately following the commencement of negotiations for that purpose, or within such further time as may be agreed upon, the matter shall be submitted to arbitration as hereinafter provided.

Section 3. If the volume of business handled for the Portland Company hereunder requires the use of additional trackage in Union Company's Barnes Yard, the Union Company shall either assign such additional trackage to such use, or construct additional trackage to be so used. If such trackage is so assigned, the Portland Company shall pay annually to the Union Company, in addition to the charges specified in Section 1 of this Article, as rental for the use of said trackage an appropriate percentage of the value of such trackage (including roadbed, right of way and other property in place appurtenant thereto), together with all expenses incurred by the Union Company in the maintenance and repair of said trackage, so long as said trackage continues to be assigned to such use. If such trackage is so constructed by Union Company, the cost thereof shall be paid by Portland Company promptly on rendition of bill or bills therefor. The Portland Company shall not thereby acquire any right, title or interest in the trackage so constructed, which shall be owned by

and subject to the unrestricted control, management, direction and administration of the Union Company, but upon termination of this contract howsoever, the Union Company shall pay to the Portland Company the then salvage value of the materials comprising said trackage, less the cost of recovery thereof. The Union Company shall have full and final authority to determine from time to time whether the business handled for the Portland Company hereunder requires assignment or construction of additional trackage as herein provided, but such judgment shall not be arbitrarily exercised.

ARTICLE VI

Section 1. Union Company shall be bound to use only customary care, skill and diligence in maintaining and repairing the property involved in this agreement, and in managing and operating the same, and the indemnity assured by the Portland Company to the Union Company in the switching of the cars and loads of the Portland Company shall obtain and continue irrespective of any question or charge of negligence or inefficiency of the Union Company in its maintenance or its operation.

ARTICLE VII

Section 1. The books, records, vouchers and papers of the Union Company touching or material to the property involved in this agreement and betterments or additions thereto, or touching or material to the cost of rendering services hereunder, at all times shall be freely open to the examination of the Portland Company.

Section 2. If at any time a question shall arise between the parties hereto touching the construction or intent of this contract, or concerning the business or the manner of transacting the business to be carried on under

its provisions, or concerning the observance or performance of any of its covenants or stipulations, upon which the parties cannot agree, such questions shall be submitted to the arbitrament of three disinterested persons familiar with such business and experienced in railway operation, accounting or management. The party demanding such reference shall give to the other party written notice of such demand, stating specifically the question to be submitted for decision and nominating a person who has the required qualifications to act as one referee. If at the expiration of thirty (30) days from the receipt of such notice the party receiving it has not notified the party demanding the reference of its nomination of a second referee having like qualifications, the party making the demand may make such selection. The first and second referees chosen shall select a third, and when the board is complete the referees shall fix a day and place for hearing, of which the parties shall be severally notified. If the referees chosen shall be unable to agree upon a third referee, such third referee may be appointed upon ten (10) days' notice upon motion of either party by a Judge of any Court of the United States within the State of Oregon. After hearing the testimony and arguments which may be submitted by each party, the referees, when a majority of the arbitrators agree upon an award, shall state it in writing, which when delivered to both parties shall be binding and conclusive upon each, and each party hereby expressly agrees to be bound conclusively thereby; and immediately upon such award each party will make such changes in the conduct of its business or such repayment or restitution, as the case may be, as are in and by such award required by it to be made.

The books and papers of both parties, so far as they relate to any matter submitted to arbitration, shall be open

to the examination of the arbitrators, and the party against whom award is made shall pay all the fees and expenses of the arbitration; and until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under the terms of this agreement shall continue to be transacted and made in the manner and form existing prior to the arising of such question.

-If either party shall refuse to keep and perform any award, the adverse party may enforce the same by apt proceedings in any court of law or equity.

ARTICLE VIII

Section 1. The Portland Company covenants and agrees to faithfully perform each and all of the conditions and obligations stated in this contract. If the Portland Company shall fail to make any of the payments required by this contract, within the time provided for such payment, or shall fail to keep or perform any of the covenants, obligations or conditions hereinbefore or hereafter stated, and such failure shall continue for a period of sixty (60) days, the Union Company shall have the right, at its option, to terminate and cancel this agreement and all rights of the Portland Company under the same. Notwithstanding such cancellation and termination, the right shall continue with the Union Company to collect all sums due or owing to it by the Portland Company at the time of such termination and cancellation.

Section 2. Notices under this contract shall be given in writing to the President, Vice President, General Manager or Secretary of the other Company.

ARTICLE IX

Section 1. If at any time said River Gate Industrial District or any part thereof, or the property to the east thereof and west of Portland Company's main line, is served by trackage springing from said main line, the Portland Company will admit the Union Company to joint ownership and use thereof on terms substantially the same as those herein stated.

ARTICLE X

Section 1. Each party shall have the right to locate new industries adjacent to the track illustrated in yellow on "Exhibit A." but only upon the mutual agreement of both parties.

ARTICLE XI

Section 1. In the event of the retirement of the Spokane, Portland and Seattle Railway Company from active railroad operation, or on its dissolution, it shall be privileged to assign the rights conferred to it by this agreement to the Northern Pacific Railway Company and to the Great Northern Railway Company, jointly or to either of them, as an entirety, or to the successor of said corporations. The Spokane, Portland and Seattle Railroad Company, or its said proposed assignee, may lease or mortgage the same in its entirety, as a part of its or their railroad, but otherwise than as in this Article provided the same shall not be assigned, leased or transferred, or any interest therein, without the written consent of the Union Company first obtained, and when assigned, transferred, leased or mortgaged as provided in this Article, the covenants and agreements herein contained shall bind the successors, assigns and lessees and shall inure in favor of the successors, assigns and lessees of the parties for whose benefit made.

ARTICLE XII

Section 1. This agreement shall be effective from and after January 22, 1960.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first herein written.

• • •

U
G
C
S
S
S
S
M
G
S
S
A
S
S
Q
S
S
N
S
-
U
U
W

EXHIBIT NO. 45

SAMPLE (10%) OF S. F. CARLOADS SWITCHED BY PENINSULA TERMINAL RR., Portland, Ore., Year 1967.

EXHIBIT

CARS	LOAD		TG	SP to UP or SPS		UP or SPS to P.T.		No. of HOURS INVOLVED	P.T. to UP or SPS		UP or SPS to SP		No. HOURS INVOLVED	
	FROM	VIA		as shown DATE	TIME	as shown DATE	TIME		as shown DATE	TIME	as shown DATE	TIME		
SP 216317	PT(1)	UP	SP						1/18/67	9:30PM	1/19/67	7:30PM	22'0"	
SP 211544	PT(1)	UP	SP	1/26/67	1:30AM	1/27/67	6:30AM	29'0"	1/28/67	10:00PM	1/30/67	3:20AM	29'0"	(1)
UP 166370	SP(1)	UP	PT	1/28/67	5:00PM	1/29/67	3:20PM	22'20"	1/30/67	9:30PM	2/6/67	6:00AM	152'30"	is
GATX 99449	SP(1)	UP	PT	1/2/67	5:00AM	1/3/67	4:20AM	23'20"	1/16/67	10:00PM	1/17/67	3:00PM	17'0"	UP
CP 296497	SP(1)	UP	PT	12/29/66	5:00AM	1/5/67	6:00AM	169'0"						
SP 175741	SP(1)	UP	PT	1/8/67	5:15PM	1/9/67	1:50PM	20'35"	1/13/67	11:00PM	1/14/67	11:20AM	12'20"	(2)
SP 216279	SP(1)	UP	PT	2/8/67	1:05PM	1/9/67	7:15AM	18'10"	1/13/67	9:30PM	2/14/67	4:55PM	19'25"	del
SP 674132	SP(1)	UP	PT	2/24/67	4:00PM	2/26/67	3:50AM	35'50"	2/28/67	10:00PM				to
SP 541281	PT(1)	UP	SP	2/4/67	9:55PM	2/6/67	2:20PM	40'25"	2/8/67	3:00PM	2/9/67	3:45PM	24'45"	ER
SP 340428	PT(1)	UP	SP	2/3/67	8:50AM	2/5/67	12:20PM	39'30"	2/8/67	3:00PM	2/9/67	3:45PM	24'45"	
SP 340245	PT(1)	UP	SP	2/28/67	9:10AM	3/1/67	6:00AM	20'50"	3/3/67	11:00AM	3/4/67	6:45AM	19'45"	(3)
MILW 12681	SP(1)	UP	PT	3/29/67	9:30AM	3/30/67	6:45AM	21'15"						del
GATX 99449	SP(1)	UP	PT	3/5/67	7:00PM	3/6/67	5:30AM	10'30"	3/8/67	11:00PM	3/10/67	7:00AM	32'0"	Ter
SP 181060	SP(1)	UP	PT	3/13/67	1:10AM	3/14/67	4:00AM	14'50"						
SP 217055	PT(1)	UP	SP	3/29/67	9:10PM	3/31/67	2:15PM	41'5"	4/1/67	10:00PM	4/3/67	10:10AM	36'10"	
SP 541679	PT(1)	UP	SP	4/16/67	7:00PM	4/18/67	6:30AM	35'30"	4/25/67	10:30PM	4/27/67	3:10AM	28'40"	
ALB 803	PT(1)	UP	SP						4/25/67	10:30PM	4/27/67	3:10AM	28'40"	
SP 117583	SP(1)	UP	PT	4/2/67	8:55AM	4/3/67	1:50PM	16'55"	4/5/67	10:00PM	4/6/67	11:30PM	25'30"	
SP 214742	SP(1)	UP	PT	4/7/67	9:20PM	4/9/67	2:10PM	42'50"						
SP 176348	SP(1)	UP	PT	4/15/67	5:15AM	4/16/67	3:33PM	34'18"	4/19/67	9:00PM	4/21/67	6:15AM	33'15"	
SP 541695	PT(1)	UP	SP	4/11/67	1:45PM	4/13/67	9:10AM	43'25"	4/18/67	3:00PM	4/20/67	6:05AM	39'5"	
REGW 30156	PT(1)	UP	SP	4/14/67	9:3 AM	4/16/67	3:30PM	54'0"	4/19/67	3:00PM	4/20/67	11:30PM	32'30"	
GMD 70125	PT(1)	UP	SP	5/1/67	10:30AM	5/2/67	2:35PM	28'5"	5/5/67	3:00PM	5/8/67	6:45AM	63'45"	
SP 210795	PT(1)	UP	SP						3/6/67	5:30AM	3/9/67	10:55AM	65'25"	
SP 223149	PT(1)	UP	SP						3/22/67	11:00PM	3/23/67	8:50PM	21'50"	
SP 541457	PT(1)	UP	SP	4/30/67	6:20PM	5/2/67	2:35PM	43'15"	5/5/67	3:00PM	5/8/67	6:45AM	63'45"	
WP 7256	SP(1)	UP	PT	5/1/67	10:30AM	5/2/67	2:35PM	28'5"						
SP 215580	SP(1)	UP	PT	5/20/67	9:05AM	5/22/67	3:33AM	42'28"	5/23/67	11:00AM	5/24/67	6:50AM	19'50"	
WP 88083	SP(1)	UP	PT	5/30/67	1:10AM	5/30/67	5:00PM	15'50"	6/1/67	11:00PM	6/2/67	7:10PM	20'10"	
SSW 71083	SP(1)	UP	PT	6/28/67	1:30PM	6/29/67	12:15PM	22'45"	7/3/67	10:00PM	7/10/67	9:20PM	167'20"	
SP 212894	SP(3)	SPS	PT	6/21/67	8:30AM	6/22/67	3:15AM	18'45"						
SP 208586	SP(3)	SPS	PT	7/25/67	3:15PM	7/26/67	7:15PM	28'0"						
SP 673667	SP(3)	SPS	PT	8/11/67	12:35PM	8/12/67	3:10AM	14'35"	8/16/67	10:00PM	9/4/67	10:00AM	444'0"	
SP 674452	SP(3)	SPS	PT	8/29/67	12:20PM	8/30/67	10:30AM	22'10"	9/8/67	11:00AM				
MAHI 36005	SP(1)	UP	PT	3/21/67	9:00AM	8/22/67	2:20PM	29'20"	8/24/67	3:00PM	8/25/67	12:00Noon	21'0"	
SP 222043	PT(1)	UP	SP	9/2/67	9:00PM	9/4/67	3:20PM	42'20"	9/8/67	11:00AM	9/9/67	11:00PM	36'0"	
UP 46728	SP(1)	UP	PT	9/27/67	1:00AM	9/27/67	6:30AM	5'30"						
UP 112325	SP(1)	UP	PT	9/28/67	4:35PM	9/30/67	3:15PM	46'40"						
WP 88130	PT(2)	SPS	SP						9/11/67	10:00PM	9/12/67	8:40PM	22'40"	

EXHIBIT NO. 45

FILE (10%) OF S. P. CARLOADS SWITCHED BY PENINSULA TERMINAL RR., Portland, Ore., Year 1967

EXHIBIT

LOAD			SP to UP or SPS		UP or SPS to P.T.		No. of HOURS INVOLVED	P.T. to UP or SPS		UP or SPS to SP		No. HOURS INVOLVED
FROM	VIA	TO	as shown DATE	TIME	as shown DATE	TIME		as shown DATE	TIME	as shown DATE	TIME	
PT(1)	UP	SP						1/18/67	9:30PM	1/19/67	7:30PM	22'0"
PT(1)	UP	SP	1/26/67	1:30AM	1/27/67	6:30AM	29'0"	1/28/67	10:00PM	1/30/67	3:20AM	29'20"
SP(1)	UP	PT	1/28/67	5:00PM	1/29/67	3:20PM	22'20"	1/30/67	9:30PM	2/6/67	6:00AM	152'30"
SP(1)	UP	PT	1/2/67	5:00AM	1/3/67	4:20AM	23'20"	1/16/67	10:00PM	1/17/67	3:00PM	17'0"
SP(1)	UP	PT	12/29/66	5:00AM	1/3/67	6:00AM	169'0"					
SP(1)	UP	PT	1/8/67	5:15PM	1/9/67	1:50PM	20'35"	1/13/67	11:00PM	1/14/67	11:20AM	12'20"
SP(1)	UP	PT	2/8/67	1:05PM	1/9/67	7:15AM	18'10"	1/13/67	9:30PM	2/14/67	4:55PM	19'25"
SP(1)	UP	PT	2/24/67	4:00PM	2/26/67	3:50AM	35'50"	2/28/67	10:00PM			
PT(1)	UP	SP	2/4/67	9:55PM	2/6/67	2:20PM	40'25"	2/8/67	3:00PM	2/9/67	3:45PM	24'45"
PT(1)	UP	SP	2/3/67	8:50AM	2/5/67	12:20PM	39'30"	2/8/67	3:00PM	2/9/67	3:45PM	24'45"
PT(1)	UP	SP	2/28/67	9:10AM	3/1/67	6:00AM	20'50"	3/3/67	11:00AM	3/4/67	6:45AM	19'45"
SP(1)	UP	PT	3/29/67	9:30AM	3/30/67	6:45AM	21'15"					
SP(1)	UP	PT	3/5/67	7:00PM	3/5/67	5:30AM	10'30"	3/8/67	11:00PM	3/10/67	7:00AM	32'0"
SP(1)	UP	PT	3/13/67	1:10AM	3/14/67	4:00AM	14'50"					
PT(1)	UP	SP	3/29/67	9:10PM	3/31/67	2:15PM	41'5"	4/1/67	10:00PM	4/3/67	10:10AM	36'10"
PT(1)	UP	SP	4/16/67	7:00PM	4/18/67	6:30AM	35'30"	4/25/67	10:30PM	4/27/67	3:10AM	28'40"
PT(1)	UP	SP						4/25/67	10:30PM	4/27/67	3:10AM	28'40"
SP(1)	UP	PT	4/2/67	8:55AM	4/3/67	1:50PM	16'55"	4/5/67	10:00PM	4/6/67	11:30PM	25'30"
SP(1)	UP	PT	4/7/67	9:20PM	4/9/67	2:10PM	42'50"					
SP(1)	UP	PT	4/15/67	5:15AM	4/16/67	3:33PM	34'18"	4/19/67	9:00PM	4/21/67	6:15AM	33'15"
PT(1)	UP	SP	4/11/67	1:45PM	4/13/67	9:10AM	43'25"	4/18/67	3:00PM	4/20/67	6:05AM	39'5"
PT(1)	UP	SP	4/14/67	9:3 AM	4/16/67	3:30PM	54'0"	4/19/67	3:00PM	4/20/67	11:30PM	32'30"
PT(1)	UP	SP	5/1/67	10:30AM	5/2/67	2:35PM	28'5"	5/5/67	3:00PM	5/8/67	6:45AM	63'45"
PT(1)	UP	SP						3/6/67	5:30AM	3/9/67	10:55AM	65'25"
PT(1)	UP	SP						3/22/67	11:00PM	3/23/67	8:50PM	21'50"
PT(1)	UP	SP	4/30/67	6:20 PM	5/2/67	2:35PM	43'15"	5/5/67	3:00PM	5/8/67	6:45AM	63'45"
SP(1)	UP	PT	5/1/67	10:30AM	5/2/67	2:35PM	28'5"					
SP(1)	UP	PT	5/20/67	9:05AM	5/22/67	3:33AM	42'28"	5/23/67	11:00AM	5/24/67	6:50AM	19'50"
SP(1)	UP	PT	5/30/67	1:10AM	5/30/67	5:00PM	15'50"	6/1/67	11:00PM	6/2/67	7:10PM	20'10"
SP(1)	UP	PT	6/28/67	1:30PM	6/29/67	12:15PM	22'45"	7/3/67	10:00PM	7/10/67	9:20PM	167'20"
SP(3)	SPS	PT	6/21/67	8:30AM	6/22/67	3:15AM	18'45"					
SP(3)	SPS	PT	7/25/67	3:15PM	7/26/67	7:15PM	28'0"					
SP(3)	SPS	PT	8/11/67	12:35PM	8/12/67	3:10AM	14'35"	8/16/67	10:00PM	9/4/67	10:00AM	444'0"
SP(3)	SPS	PT	8/29/67	12:20PM	8/30/67	10:30AM	22'10"	9/8/67	11:00AM			
SP(1)	UP	PT	3/21/67	9:00AM	8/22/67	2:20PM	29'20"	8/24/67	3:00PM	8/25/67	12:00Noon	21'0"
PT(1)	UP	SP	9/2/67	9:00PM	9/4/67	3:20PM	42'20"	9/8/67	11:00AM	9/9/67	11:00PM	36'0"
SP(1)	UP	PT	9/27/67	1:00AM	9/27/67	6:30AM	5'30"					
SP(1)	UP	PT	9/28/67	4:35PM	9/30/67	3:15PM	46'40"					
PT(2)	SPS	SP						9/11/67	10:00PM	9/12/67	8:40PM	22'40"

(1) Time recorded
is delivery between
UP-SP at Albina, C.

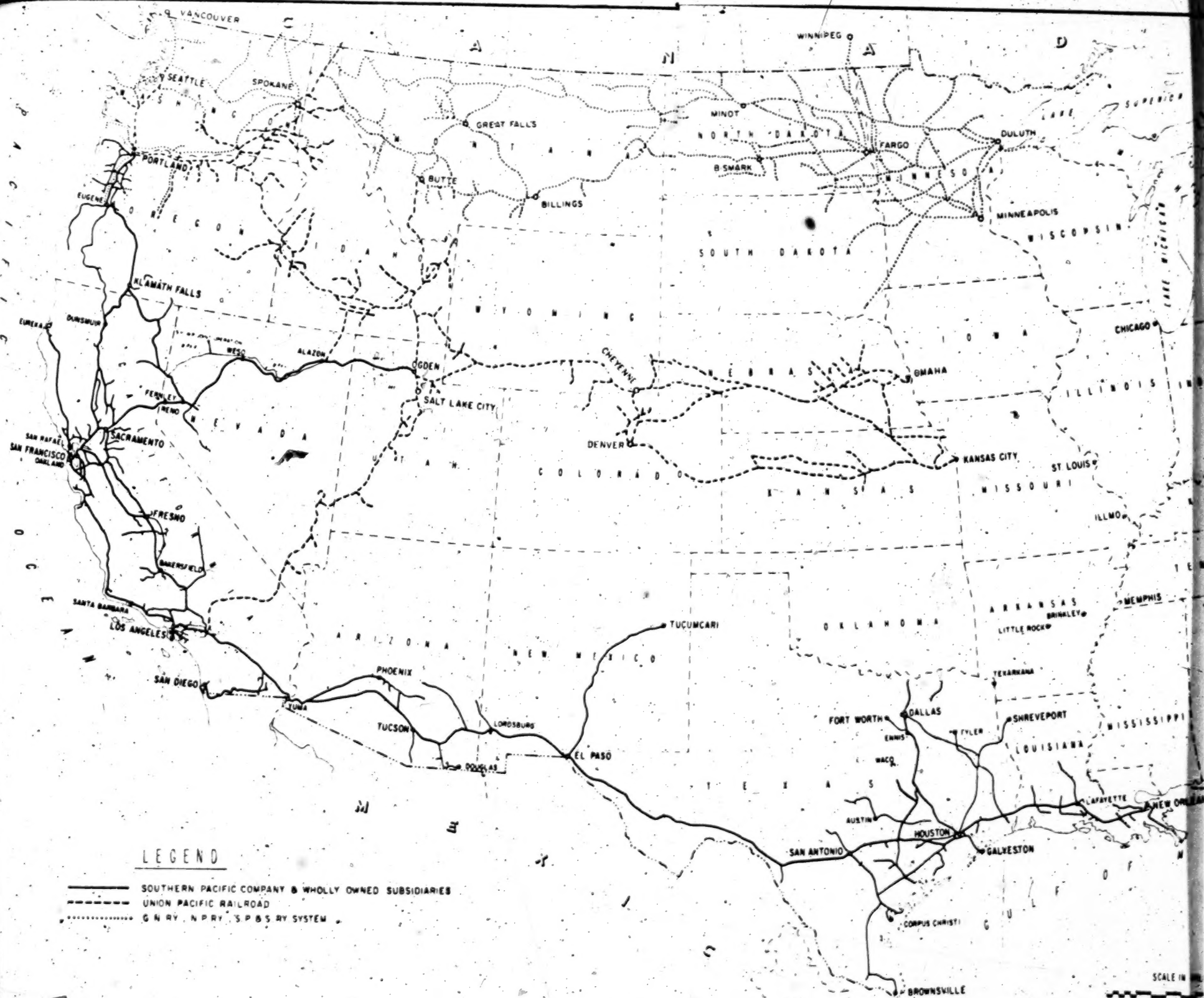
(2) Time recorded is
delivery from SPS
to Portland Termi
RR

(3) Time recorded
delivery from Port
Terminal to SPS

EXHIBIT NO. 45

Page 2

CARS	LOAD			SP to UP or SPS AS SHOWN		UP or SPS to P.T. AS SHOWN		No. of HOURS INVOLVED	P.T. to UP or SPS AS SHOWN		UP or SPS to SP AS SHOWN		No. of HOURS INVOLVED
	FROM	VIA	TO	DATE	TIME	DATE	TIME		DATE	TIME	DATE	TIME	
GATX 79576	SP(1)	UP	PT	10/24/67	5:00PM	10/25/67	2:20PM	21'20"	10/27/67	11:59PM	10/28/67	2:00PM	14'1"
NP 83050	PT(2)	SPS	SP						12/17/67	12:10PM	12/17/67	7:00PM	6'50"
SP 217877	SP(3)	SPS	PT	12/4/67	9:00AM	12/5/67	1:00AM	16'0"	12/7/67	11:00AM	12/14/67	6:30AM	163'30"
AVERAGE NUMBER OF HOURS INVOLVED:								32'10"					55'16"



FD 24679 ET AL
EXHIBIT NO 46
WITNESS ORDWAY

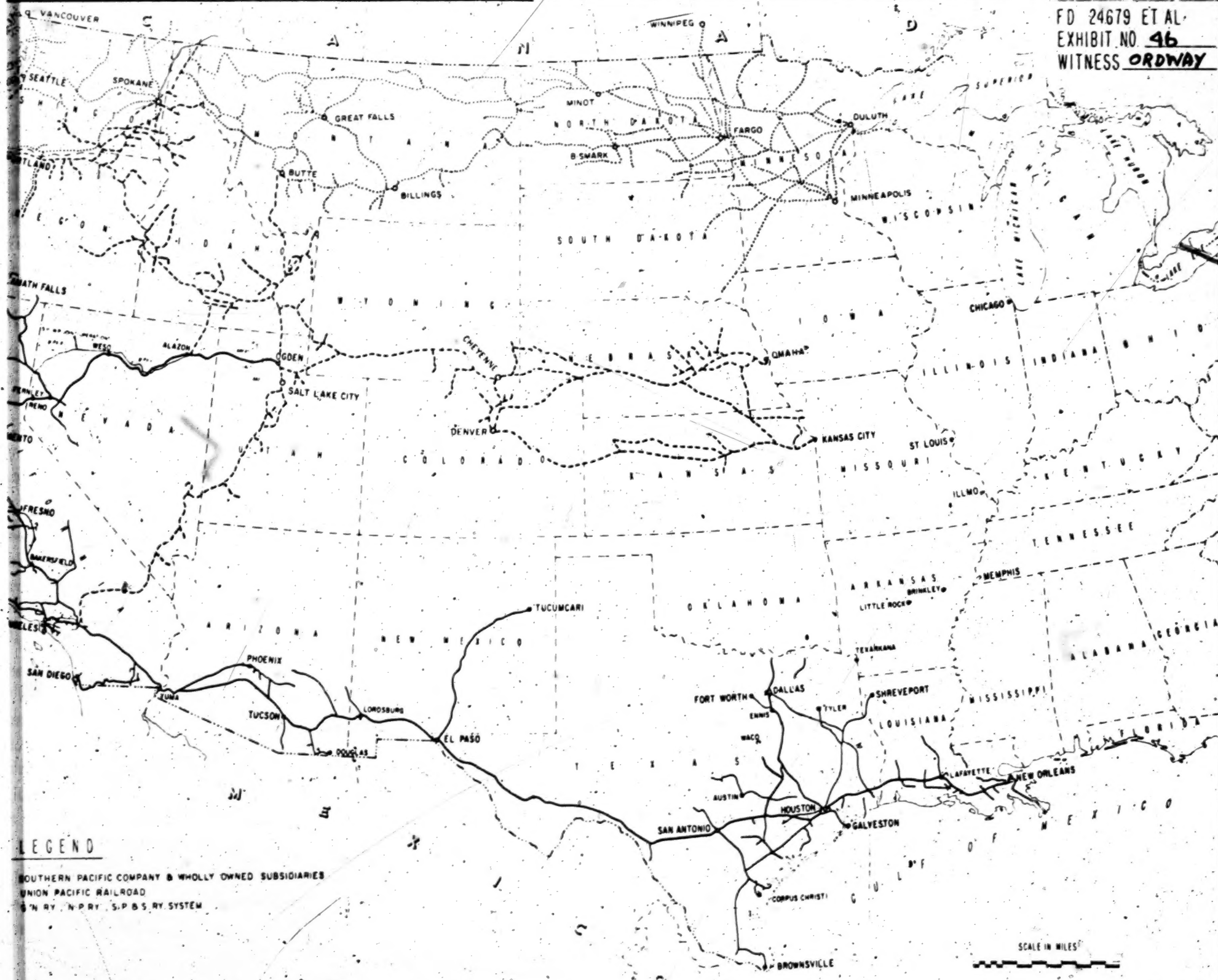


EXHIBIT 47

STATEMENT OF LARRY H. DUGAN

My name is Larry H. Dugan and my business address is 611 White Building, Seattle, Washington 98101. I am Vice President and Western Counsel, Executive Department, of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which is commonly known as the Milwaukee Road. For convenience, I will from time to time refer to it simply as "the Milwaukee".

I was graduated from Drake University in 1935 with the degree of Bachelor of Laws. I engaged in private practice in Iowa from 1935 to 1939 when I entered the service of the Milwaukee, in its Law Department in Chicago. I was appointed to my present position in Seattle in 1948. I am admitted to practice law in the states of Iowa, Illinois and Washington.

The Milwaukee's petition for inclusion as joint owner of Peninsula Terminal Company was authorized by Resolution of its Board of Directors, dated September 21, 1967. A certified copy of said resolution is marked as my Exhibit No. 48 (LHD-1).

The Milwaukee Road operates in fourteen states, its main lines extending from Seymour, Indiana through Chicago, Twin Cities, Minnesota to Seattle and Tacoma, Washington on Puget Sound, and from Tacoma to Longview, Washington on the lower Columbia River. Its main lines also extend from Chicago to Council Bluffs and to Kansas City and connections beyond these gateways. My Exhibit No. 49 (LHD-2) is a map of the principal lines of the Milwaukee.

The present Milwaukee Road was organized under the laws of the state of Wisconsin in 1927, and in the following year, with Commission approval (131 I. C. C. 673), acquired

the properties of the former Chicago, Milwaukee & St. Paul Railway Company (referred to below as "the St. Paul Company") as the result of a foreclosure sale in 1926. The St. Paul Company was placed in receivership in 1925, largely, as the Commission noted, as a consequence of its Puget Sound extension in 1909 at a cost in excess of \$250,000,000.00.

The Milwaukee Road had its beginning 120 years ago in a predecessor Company, The Milwaukee & Waukesha Railroad Company, organized in 1847. In 1863, this company was succeeded by the Milwaukee & St. Paul Railroad Company. In 1874 the name was changed to Chicago, Milwaukee & St. Paul Railway Company, which continued until succeeded by the present Company in the manner above mentioned.

In 1935 the present Company applied for reorganization under the Bankruptcy Act, from which it emerged in 1945 as the reorganized company pursuant to a Plan of Reorganization approved by the Commission and confirmed by the Federal District Court in Chicago.

Meanwhile, the properties of Chicago, Terre Haute & Southeastern Railway Company (successor to three prior companies) were leased to the St. Paul Company in 1921 for 999 years. Following reorganization, the present Company became lessee of these properties early in 1946, at which time the lease and all outstanding mortgages and bonds were modified. Some two years later the present company acquired the ownership of all of the Terre Haute properties and assumed its mortgage indebtedness.

The Milwaukee Road is not owned or controlled by any other railroad and does not own or control any of the parties to this proceeding, directly or indirectly. It does not have any common officers or directors with any of said parties.

The Milwaukee's Puget Sound extension from the Missouri River at Mobridge, South Dakota was completed to Seattle in 1908 and to Tacoma in 1909, the same year the Union Pacific was granted trackage rights from Portland to Tacoma and the Great Northern from Seattle to Portland over the lines of the Northern Pacific and SP&S. The SP&S was constructed from Spokane to Portland via Vancouver, Washington in 1909.

Between 1909 and 1918 the Milwaukee constructed or acquired most of its branch lines located west of Mobridge, South Dakota. These include its Central Montana line extending north from its main line to Great Falls, Montana with branches therefrom; its Elk River Branch in Idaho which connects at Bovill, Idaho with the Washington, Idaho & Montana Railroad, a subsidiary of the Milwaukee Road; its lines to Spokane and to Coeur d'Alene and Metaline Falls and its Moses Lake and Marcellus branches, all in Northern Idaho and Eastern Washington; its Morton, Raymond and Grays Harbor branches south and west of Tacoma; its Everett line, its Bellingham to Sumas line, and its Port Angeles line, north and west of Seattle, all in Western Washington.

In 1923, the Longview, Portland & Northern, an independent railroad, constructed a line from Longview along the west side of the Cowlitz River to Ryderwood, Washington, located about 20 miles distant from the Milwaukee's Raymond branch. In 1930, the Milwaukee planned to construct a line to connect with the LP&N. At the same time the Northern Pacific, Great Northern and Oregon-Washington Railroad & Navigation Company (OWR&N), a Union Pacific subsidiary, applied to the Commission to purchase the lines of the LP&N. The Milwaukee intervened and applied to acquire a one-fourth interest in the lines of the LP&N and for trackage rights from Chehalis Junction and

Vader Junction over the Northern Pacific and LP&N to Longview, which the Commission approved. See Finance Docket No. 8484, 175 I. C. C. 253 and 644. Since 1931, the Milwaukee's operations have extended to Longview, Washington. The LP&N line washed out in a flood in 1933 and thereafter, to avoid rebuilding the LP&N, the Milwaukee was granted trackage rights over the Northern Pacific line from Olequa, Washington to Longview Junction. See Finance Docket No. 10390, 207 I. C. C. 438. At Longview, all four lines have trackage rights over the old LP&N terminal facilities but actual switching is performed for all lines by the LP&N, an independent operating Company, under contract, thus making all shippers and Port facilities at Longview on-line industries, available to all trunk lines equally.

When the Great Northern, Northern Pacific and Burlington Lines applied to the Commission in 1961 for authority to consolidate their properties and franchises and for the consolidated company to acquire their respective subsidiaries and to lease the properties and franchises of the Spokane, Portland & Seattle Railway Company (SP&S) for operation as a single entity by the new company to be known as Great Northern Pacific-Burlington Lines, Inc., the Milwaukee intervened in opposition unless six specific conditions were imposed. See Finance Docket No. 21478, sometimes called the Northern Lines merger case. After extensive hearings, in which the Milwaukee took an active part, an examiner's report was issued recommending approval of the proposed transactions, subject to certain conditions including three of the conditions proposed by the Milwaukee. The Milwaukee and other parties took exception, and following oral argument, the Commission issued its report and order of March 31, 1966, denying the proposed merger of the Northern Lines.

The Commission at that time concluded, *inter alia*, that the Milwaukee would be unable to provide a service on a basis competitive with the Northern Lines. In their petition for reconsideration, the Northern Lines offered to accept all of proposed Milwaukee conditions, pointing out that these conditions would be even more beneficial in event the Milwaukee and the Chicago & North Western Railroad were consolidated pursuant to their pending application in Finance Docket No. 24182, et al. The Milwaukee and Northern Lines then entered into an agreement, dated October 26, 1966, covering the basis for implementing the six Milwaukee conditions in the event the Northern Lines merger was eventually approved.

After further hearing and argument, the Commission reversed its March 31, 1966, decision and approved the Northern Lines merger, subject to the six conditions proposed by the Milwaukee. The Milwaukee's conditions are set forth in Appendix L to the Commission's Report and Order dated November 30, 1967, 333 I. C. C. 228. For the convenience of the parties they are reproduced in my Exhibit 50 (LHD-3).

EXHIBIT 50

Milwaukee Conditions
in
Great Northern Pacific & Burlington Lines, Merger
Finance Docket 21478

Excerpt from Appendix L to
Commission's Report on Reconsideration
and Further Hearing
Decided November 30, 1967,
331 I. C. C. 228, 356-358

"23. NuCo shall publish and file appropriate tariffs and routing schedules to be effective on and after the date of consummation of the merger, providing for the opening of junctions and gateways at Linton and Fargo, N. Dak., and [Miles City, Great Falls, Butte and] Missoula, Mont., and Spokane, Seattle, and Tacoma, Wash., with respect to traffic moving through said junctions, at the lowest applicable rates available via the Twin Cities and Sioux City gateways (on a reciprocal basis, with the Milwaukee affording equal privileges to NuCo) with just and reasonable divisions thereof as may be agreed upon, or fixed by this Commission if such carriers cannot so agree, and the Milwaukee shall, on traffic obtained pursuant to this condition or those in paragraph 24, below, open or keep open, in similar manner, its junctions at Twin Cities, Sioux City, and Council Bluffs with North Western, and on traffic obtained pursuant to this condition or those in paragraph 24 below, open or keep open in similar manner its junction at Twin Cities with Soo Line.

"Routing via the 11 first-named gateways so opened shall be restricted to one such gateway on any single shipment, and to traffic destined to or billed for transit

or stopoff at any station on the other line beyond the junction up to and including the terminal area of the next junction, except that routing via Linton and Fargo shall be provided to and from Billings and Great Falls, Mont., and stations intermediate thereto.

"24. At the request of the Milwaukee, presented in writing not more than 6 months after date of consummation of the unification authorized herein or not more than 6 months after the effective date of any certificate or order of this Commission:

"(a) Permitting that railroad to extend its operations to Portland, Oreg., and to acquire trackage rights over the line of NuCo between Longview Junction, Wash., and Portland, Oreg., NuCo shall grant to the Milwaukee, upon such fair and reasonable terms as the parties may agree or as determined by this Commission in the event of their inability to agree, trackage rights to operate freight trains over NuCo lines between Longview Junction and Portland, including the right to serve on an equal basis all present and future industries at Portland and intermediate points and the use of NuCo facilities at Portland necessary for the switching of traffic to other railroads and industries. NuCo shall maintain Portland as an open gateway on a reciprocal basis with the Milwaukee to the same extent as with other connecting carriers:

"(b) Permitting that railroad to acquire trackage rights over the lines of NuCo between Renton and Snohomish, Wash., and between Everett and Bellingham, Wash., NuCo shall grant to the Milwaukee, upon such fair and reasonable terms as parties may agree or as determined by this Commission in the event of their

inability to agree, trackage rights to operate freight trains over NuCo lines between Renton and Snohomish, and between Everett and Bellingham; and

“(c) Permitting that railroad to extend its service to Billings, Mont., and the handling of its traffic by NuCo from and to Judith Gap, Miles City, and Bozeman, Mont. on the one hand, and, on the other, to, from, and through Billings, Mont., including the switch-of cars to or from industries at Billings, NuCo shall impartially handle the empty and loaded cars of that railroad from, to and through Billings as though a station on the other road, such cars to be delivered to and returned by NuCo at Miles City, Judith Gap, or Bozeman, according to the direction of the traffic, upon such fair and reasonable terms as the parties may agree or as may be determined by this Commission in the event of their inability to agree.

“25. NuCo shall join with the Milwaukee in:

“(a) Eliminating at their common points the dual basis of switch charges by canceling in their respective tariffs the higher switch charges required to be paid when absorbed by the line-haul carrier, and by providing in their respective tariffs for the absorption by the line-haul carrier of switch charges on all traffic, subject to a reasonable minimum carload revenue, and

“(b) Reestablishing rate relationships via all routes with that railroad when, by reason of this unification, the relationships of rates via such routes with rates via other routes of the component lines merged into or operated under lease by NuCo are disturbed.”

EXHIBIT 53

STATEMENT OF J. T. HAYES

Exhibit (JTH-1).

My name is James T. Hayes. My business address is 538 Union Station, Chicago, Illinois, and my present position with the Milwaukee Railroad is Special Assistant to President. I started with the Milwaukee Railroad as a clerk in the operating department in 1926 and with the exception of four years in the army during World War II have been continuously employed in various clerical positions and as traveling car agent, transportation inspector, trainmaster, assistant superintendent, division superintendent, assistant to vice president-operations, and since August 1, 1966 have been on my present assignment.

In the so-called Northern Lines Case, F. D. 21478, et al, involving the proposed unification of Great Northern, Northern Pacific, Chicago, Burlington & Quincy, Pacific Coast, and Spokane, Portland & Seattle Railways, the Milwaukee Road asked that the Commission predicate its approval of this merger on the granting by the new GNP&B Company to the Milwaukee of six conditions which the Milwaukee requested so that it could maintain competitive service after the merger. One of these conditions was entry into Portland.

The Interstate Commerce Commission approved the merger in its Order dated December 15, 1967. Prior to this time the Milwaukee and the Northern Lines reached an agreement dated October 24, 1966, setting forth the terms upon which the Milwaukee would receive the conditions granted it in the aforesaid proceedings. An excerpt from this agreement covering Condition No. 2 granting the Milwaukee Entry into Portland and Trackage Rights between Longview Junction and Portland is attached hereto as an

Our agreement with the Northern Lines provides that the new company or SP&S will grant to the Milwaukee trackage rights over present Northern Pacific and SP&S tracks between Longview Junction, Washington and Hoyt Street Freight Yard in Portland, Oregon, including all main, second main, passing and industry tracks. It is important to Milwaukee's interest that it also have access to the Peninsula Terminal facilities on the same basis as other lines.

Attached, Exhibit (JTH-2), is a map of the Portland area. It will be noted that Peninsula Terminal Company occupies a strategic location for an extension of trackage into the northern part of the proposed Rivergate Industrial District, and as this district develops the importance of North Portland as an interchange point will increase, particularly if all trunk lines serving Portland have access to it. The Milwaukee Road is not yet in Portland, of course, and we are unfamiliar with all of the interchange practices that are in effect in this area. However, it is our understanding that Guild Lake Yard and the Depot Yard are the principal interchange points between the Northern Lines and Union Pacific and Southern Pacific, with the Portland Terminal Company crews handling the moves between Guild Lake Yard and the Depot Yard, a distance of approximately two miles. Union Pacific and Southern Pacific have a direct train yard interchange between themselves. The Northern Lines and Union Pacific interchange with Peninsula Terminal at North Portland. There is also a physical interchange of cars between Northern Lines and Union Pacific at Barnes Yard.

It is approximately six miles from North Portland to Guild Lakes on the SP&S double track main line. At East St. Johns, an intermediate station between North Portland Junction and Guild Lake one mile south of North Portland, a connection off the SP&S leads into the Barnes Yard.

GNP&B and Union Pacific will each have the right to reach and interchange at North Portland with the Peninsula Terminal Company, or its successor. Milwaukee requests a similar right so that its traffic can be handled expeditiously and in the same manner as GNP&B traffic without having to be carried past this interchange point and through a major interchange such as Guild Lake or the Depot Yard some 6 and 8 miles distant, respectively, and then handled by one additional intermediate carrier, because such handling would inevitably result in a day's delay to the cars. The best service Milwaukee could provide to this area would be to set out and pick up cars at North Portland with its road trains, thereby reducing terminal handling to a minimum and eliminating the delays involved, and we would propose to do this. However, if the pattern of operation after merger would not permit this, it still would be our intention to work out an efficient means of interchanging this traffic via North Portland.

The Peninsula Terminal Company is the only remaining railroad in Portland that is not already owned wholly or jointly by Union Pacific, Southern Pacific, or the proposed GNP&B Company, and therefore represents the last opportunity the Milwaukee will have to acquire physical ownership within the Portland Switching District. It is true that at the present time the Commission has suspended its Order in Finance Docket Nos. 21478, et al, in order to take under advisement various petitions for reconsideration, however it is felt that these petitions will be disposed of promptly and that the GNP&B merger will be consummated in the near future. The Milwaukee Road will then be able to serve Portland with its own road trains, make its car fleet available to shippers in this area, and provide single line service between Portland and the industries on the Milwaukee Road system. Ownership in the Peninsula Terminal Company,

with the right to reach it, will put Milwaukee into Portland on the basis of some physical ownership as well as the Joint Facility basis under our agreement with the Northern Lines, and will insure our participation in the development of this area.

I.C.C. F.D. No. 24679

Exhibit No. . . . (JTH-1)

EXHIBIT JTH-1

EXCERPT FROM NORTHERN LINES AGREEMENT RELATING TO CONDITION NO. 2—ENTRY INTO PORTLAND AND TRACKAGE RIGHTS BETWEEN LONGVIEW JUNCTION AND PORTLAND

AGREEMENT BETWEEN CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY AND GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY AND GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Whereas, Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), Chicago, Burlington & Quincy Railroad Company (Burlington), Spokane, Portland and Seattle Railway Company (SP&S) and Great Northern Pacific & Burlington Lines are applicants in Finance Docket Nos. 21478, *et al.*, for authority to consummate certain transactions which would result in the consolidation of Great Northern, North-

ern. Pacific and Burlington, into Great Northern Pacific & Burlington Lines, Inc., (which, as constituted following any such consolidation, shall be referred to herein as New Company), and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) as intervened in said proceedings in order to protect its interests;

Now, therefore, the parties, hereto do hereby agree as follows:

I.

Effective upon the consummation of the consolidation proposed in Finance Nos. 21478, *et al.*, the Milwaukee shall receive all of the six (6) conditions as sought by it in the aforesaid proceedings, as follows:

Condition No. 1—Opening of Eleven New Gateways.

Condition No. 2—Entry into Portland and Trackage Rights between Longview and Portland.

Condition No. 3—Renton-Snohomish, and Everett-Bellingham Trackage Rights.

CONDITION NO. 2—ENTRY INTO PORTLAND AND TRACAGE RIGHTS BETWEEN LONGVIEW JUNCTION AND PORTLAND.

1. To the extent that New Company or SP&S can do so, it will grant to Milwaukee trackage rights over present Northern Pacific and SP&S tracks between Longview Junction, Washington, and Portland, Oregon including all main, second main, passing and industry tracks, and over SP&S tracks in the Line D valuation area in Portland, and the right to construct at its own cost any necessary cross-overs, to enable Milwaukee to operate freight trains, engines, and cars between Longview Junction and the Hoyt Street freight yard of the SP&S in Portland, with the right to handle freight traffic to or from Longview Junction, Port-

land, and all intermediate points regardless of origin or destination of said traffic.

2. Milwaukee shall have the right at its expense to string and maintain telephone and telegraph wires upon any pole line along said tracks and shall have the right to participate in use of microwave communication system on a joint facility basis between Portland and Seattle or Tacoma and intermediate points, to the extent that New Company or SP&S can grant such rights.

3. Milwaukee shall have the right to deliver cars to New Company or SP&S, in interchange or for switching, at the SP&S yard in Vancouver, Washington, and its Hoyt Street freight yard in Portland.

4. To the extent the New Company can do so, it will authorize or approve the delivery of cars by Milwaukee at Guild's Lake Terminal in Portland for interchange to or switching by any railroad using said Terminal.

5. Milwaukee shall have use of the said SP&S yard in Vancouver and of Hoyt Street freight yard in Portland to receive cars in interchange from the New Company, SP&S, and any other carrier reaching such yard.

6. To the extent New Company can do so, it will authorize or approve the Milwaukee's receipt of cars in interchange at Guild's Lake Terminal from the New Company, SP&S, or any carrier reaching said terminal, on fair and reasonable terms for the use of necessary trackage as may be arranged between the owners of said Terminal and Milwaukee.

7. Milwaukee shall have use of Hoyt Street freight yard as a terminal freight yard for its trains operating to and from Portland and use of necessary storage, team track, and TOFC facilities in Hoyt Street freight yard.

8. Milwaukee shall have use of Guild's Lake terminal to the extent New Company can so authorize or approve as a terminal freight yard for its trains operating to and from Portland on fair and reasonable terms as may be arranged between owners of said Terminal and Milwaukee.

9. At request of the Milwaukee, New Company, or SP&S in a fair and impartial manner will perform all necessary freight car switching, including making up and breaking up of trains, call train crews for Milwaukee; make emergency repairs to Milwaukee's locomotives upon request; furnish locomotive fuel, water, and sand upon request; inspect, and make on A.A.R. billing necessary repairs to Milwaukee freight cars; and upon request clean, ice and service said cars. All said services are to be performed for Milwaukee at joint facility costs.

10. New Company or SP&S at request of the Milwaukee will handle in a fair and impartial manner by its employees at its freight station in Portland the carload freight business of the Milwaukee jointly and in common with the carload freight business of the New Company or SP&S, for which services Milwaukee shall pay on the same basis as now in effect among users of Line D. New Company shall in like manner perform like services at stations intermediate between Longview Junction and Portland, the cost of which is to be included in the maintenance and operation costs.

11. To the extent that New Company or SP&S can do so, it will at the request of Milwaukee and in a fair and impartial manner perform at joint facility costs the switching of Milwaukee cars at Kalama, Vancouver, and Portland to or from industries and connecting carriers to the extent such service is performed by New Company or SP&S for itself or any other carrier.

12. Provisions similar to those in Article I, Sections 3, 4 and 5, Article, II, Sections 4, 6 and 7, and Article III, Sections 1, 2 and 4 in the agreement between Northern Pacific and Milwaukee dated November 1, 1931 covering use by Milwaukee of tracks of Northern Pacific between Olequa and Chehalis, Washington, shall be incorporated herein.

13. Milwaukee shall pay as rental for the trackage rights herein granted, including the use of Hoyt Street freight yard as a terminal freight yard, its proportion on a user basis of 5% interest of the valuation based on the original cost plus additions and betterments less retirements of the said trackage over which Milwaukee performs line haul or switching operations and of such other freight facilities as are used by Milwaukee, plus a use proportion on wheelage basis of maintenance and operation and taxes of said trackage and facilities.

14. Milwaukee shall bear its use proportion (determined in the same manner as its proportion of maintenance and operation is determined) of the service loss resulting from property retired and not replaced, measured by the use Milwaukee has made of the property retired.

15. Milwaukee will make all payments to the Treasurer of New Company at the City of St. Paul, Minnesota. Bills for maintenance and operation shall be rendered monthly by New Company as soon as may be after the close of each month, and shall be paid within sixty (60) days. Payment of such bills shall not be delayed for errors which are not serious and important but bills shall be paid as rendered notwithstanding any error of ordinary character likely to occur in railroad accounts, the necessary corrections to be made in subsequent bills.

16. Milwaukee shall not be charged for operation of any telephone or telegraph line not used in its business, but shall be charged for entire expense of any wires placed upon poles of New Company or SP&S and for a proportion of costs of maintaining each mile of pole line which number of wires placed by Milwaukee in such line bears to total number of wires therein.

17. Milwaukee shall have no right to admit any other company as user of the trackage and facilities or to handle the business of any other company, except that the rights herein acquired by Milwaukee shall be appurtenant to and run with its railroad and shall inure to the benefit of any successor company or may be sold, assigned, leased, or mortgaged by Milwaukee or successor company in connection with and as part of its railroad.

18. Agreement shall expire on the expiration date (November 1, 2030) of the agreement of November 1, 1931, referred to in Paragraph 12, above; or upon two years' notice in writing by Milwaukee.

19. The term "New Company" includes Great Northern Pacific and Burlington Lines, Inc. and any successor company. The term "SP&S" includes Spokane, Portland and Seattle Railway Company and any successor company. The term "Milwaukee" includes Chicago, Milwaukee, St. Paul and Pacific Railroad Company and any successor company.

EXHIBIT 54

STATEMENT OF P. J. CULLEN

My name is P. J. Cullen. I am Assistant Vice President—Sales and Service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which I shall refer to as the Milwaukee, and my business address is Room 784, Union Station Building, Chicago, Illinois.

I have been engaged in traffic and transportation work in various capacities on behalf of my Company for the past forty-three years. I have held various positions in rate section of the General Freight Department in Chicago and was Assistant General Freight Agents (Rates) and the tariff issuing agent before entering the Sales and Service Department of the Milwaukee. I was appointed Western Traffic Manager at Seattle, Washington, on July 1, 1955; Assistant General Freight Traffic Manager at Chicago on July 1, 1959. My headquarters were again transferred to Seattle effective September 1, 1967. On October 16, 1964, I was appointed General Freight Traffic Manager and on September 1, 1965, I was again transferred to Chicago. On March 1, 1966, I was appointed to my present position.

In my various positions in the Rates and Divisions and the Sales and Service Departments of the Milwaukee it has been my duty to learn what the shippers in our territory demand in the way of rates and service and what factors influence their choice of carriers in the routing of traffic. In carrying out my duties I have supervised the traffic activities of our agents and the work of our traffic solicitors at various cities throughout the country, have analyzed their reports to me, and have personally called upon numerous shippers to discuss their transportation and distribution problems and to seek the routing of their freight traffic

over the lines of the Milwaukee. During my two assignments to the Seattle office of the Milwaukee, my jurisdiction extended over all of our traffic agencies in the States of Washington, Oregon, Idaho and Montana and the Province of British Columbia.

I have made and supervised studies of traffic changes due to various railroad merger and control proposals and various conditions proposed therein and have reviewed and analyzed similar studies made by other railroads and have testified at Commission hearings in connection therewith. Some of the proceedings for which I have made and examined studies are the Northern Lines merger case, the Milwaukee-North Western merger case and the Union Pacific-Rock Island merger case. As the result of these studies, I have had the opportunity to apply the knowledge I have gained over the years in traffic work in formulating and evaluating the factors which affect the shippers' choice of carriers in routing traffic and to compare this with the opinions of other traffic officers.

The Milwaukee Road since 1958 has had a market and cost research department staffed with market and cost analysts. In 1958 the Milwaukee began flexivan trailer on flat car service and expanded this to all types of piggy backing in 1962. We now participate in all five piggy back plans and variations thereof. In 1967 the Milwaukee handled 61,140 trailers on flat cars with revenues of \$12.8 million. The Milwaukee has piggy back unloading and loading facilities at 58 Milwaukee Road stations throughout its territory.

In 1963, we instituted a 55½ hour schedule from Chicago to Seattle and 67¼ hour schedule from Seattle to Chicago, the fastest regular trans-continental freight schedules.

In our car fleet of approximately 39,000 cars, we have covered hopper cars, air slide cars, covered gondolas, auto rack cars, TOFC cars and a large number of refrigerated trailers, and also heavy duty multi-wheel flat cars for very heavy loading which few railroads can supply. Our fleet of special damage free box cars and load divider cars is one of the largest of any railroad in the country. We also have a large number of wide door and plug door box cars for lumber and plywood loading. The motive power of the Milwaukee is composed of approximately 700 diesel and 67 electric engines.

In 1959 we instituted our car tracing and expediting program called Carscope. Between 1959 and 1965 this system was continuously updated with the addition of new reporting stations. In 1966 a complete study of this system was made and in 1967 a third generation, direct access IBM 360 computer was installed. The function is to trace and expedite carload shipments and keep an up to date record of the location of special equipment and other equipment in short demand. Another function is to serve the shipper in the diversion and reconsignment of carload shipments and to provide information concerning unavoidable delays, etc. Our railroad has centralized these functions, providing more convenient and current information by which shippers and consignees can schedule their own manufacturing, distribution, warehousing and marketing requirements.

The Milwaukee has 57 traffic offices located throughout the United States and Canada. Its traffic solicitors cover most traffic producing points on a regular basis. These offices and their activities help us to keep in touch with traffic developments and the markets for our rail transportation to and from points throughout the country and overseas.

The Milwaukee has been active in the development of the movement of import and export traffic, especially through the West Coast ports which it serves. It recently opened a traffic office in Japan to promote such traffic.

Portland is an important seaport as well as distribution point for most of Oregon and a large part of Southwestern Washington extending north to such places as Longview, Chehalis and Centralia, Washington, and west to Willapa and the Grays Harbor area.

In proposing as a condition to the Northern Lines merger an extension of the Milwaukee's operations to Portland, it was recognized that the Milwaukee would be at a distinct disadvantage in soliciting competitive freight traffic from and to industry on the tracks of the trunk lines serving Portland or the terminal lines and facilities of subsidiary companies they own or control. It is well recognized in the railroad industry, and my experience bears this out, that a shipper, all other things being equal, will generally favor the switching carrier with his competitive business, unless to do so would delay his shipment unreasonably or there was some other tangible advantage in shipping over a competing carrier serving the same station.

Where freight charges are higher or cars are regularly delayed when moving by a competing carrier, the competing line has little chance of participating in competitive traffic.

The Milwaukee will have no industries which it will serve directly at Portland. In many instances it will be required to reach industries through connecting line switching pursuant to the switching carrier's tariffs and in some instances there may even be an intermediate switching carrier. This means that the Milwaukee will be required to absorb their charges for the switching service on competitive traffic

because generally line haul rates of the switching trunk line include switching to on-line industries. Unless the switching carrier's charges to such industries are absorbed, the other line haul carriers are not competitive. Whether these charges are absorbed depends upon the revenue which the line haul carrier retains. Thus, the level of switching charges to be absorbed often affects the level of the line haul rates which the line haul carrier maintains or proposes.

Because of the entrenched position of the present trunk lines at Portland, and particularly the Union Pacific and the Northern Lines, the Milwaukee believes that its best opportunity to offer its service to shippers and to obtain needed additional business in Portland is in the developing area served by Peninsula Terminal Company or to which the latter's lines may be extended. If Union Pacific and the Northern Lines through applicant SP&S can obtain exclusive control of Peninsula, the Milwaukee will be at a real disadvantage in serving the industries which can and will be served by Peninsula's lines. The owning companies can fix the switching charges of Peninsula to be absorbed by the Milwaukee, or paid by the shipper using Milwaukee service if not absorbed and can obtain trackage rights by mutual agreement over Peninsula so that industries served by Peninsula are on-line industries for them. Through their ownership of Peninsula the UP and SP&S will have direct access to the shippers served by Peninsula in the solicitation of freight and Peninsula's service will be tailored to meet the operations and schedules of the owning lines first and other competing connecting lines second.

If the Milwaukee were granted joint and equal ownership of Peninsula and the use of the interchange tracks connect-

ing with Peninsula, the Milwaukee would have equal voice in the charges and service of Peninsula and offer the shippers or receivers served or to be served by Peninsula an equal choice in using the Milwaukee's services to and from Portland.

This proposal of the Milwaukee takes nothing of real importance from the applicants because of the real potential of Peninsula lies in future business from the location of new industry in the industrial area which can be served by Peninsula.

EXHIBIT 56.

STATEMENT OF THOMAS W. DENCH.

My name is Thomas W. Dench. I am supervisor of the Transportation Rates Section of the Public Utility Commissioner of Oregon. I have been a member of the staff of the Oregon Public Utility Commission for approximately twenty years. My work encompasses the regulation of both railroads and motor carriers within Oregon. I am familiar with railroad rates and services from, to and within Oregon. I have participated in numerous proceedings before the Interstate Commerce Commission as a technical witness, joint board member in motor carrier application cases, and as a practitioner representing the state of Oregon.

Portland is presently served by five major railroads. The accompanying sketch map, Exhibit No. 58, shows the railroad lines within the Portland, Oregon, terminal area, the principal yards and points of interchange between them.

The trackage of Peninsula Terminal Company is located in North Portland and is shown on the map in brown. The

line extends from the Portland Union Stockyards on the east to the northeast corner of the Rivergate Industrial area, a distance of approximately 1.5 miles. Total trackage presently operated in switching service amounts to 3.97 miles. The railroad provides switching service to 14 industries in North Portland. This railroad interchanges traffic with Union Pacific Railroad and Spokane, Portland and Seattle Railway at North Portland.

The lines of the Great Northern Railway and Northern Pacific Railway appear as a broken green line. The joint main line of these railroads and that of the Spokane, Portland and Seattle Railway between Vancouver, Washington and Willbridge, Oregon, appears as a broken blue line. The Union Pacific Railroad also operates over this joint line between North Portland, Oregon, and Vancouver, Washington. Other lines of the Spokane, Portland and Seattle Railway (including Oregon Electric Railway trackage) are shown as a solid green line.

The lines of the Union Pacific Railroad appear on the map in red. The joint line of Union Pacific Railroad and the Spokane, Portland and Seattle Railway between the Union Pacific's Barnes Yard and Rivergate appears as a broken blue line. The Union Pacific Railroad, by agreement, performs the physical switching on behalf of both railroads to industries at Rivergate and to Terminal No. 4 of the Portland Commission of Public Docks in St. Johns.

Southern Pacific lines are shown as a solid blue line. Southern Pacific trackage is located in the southern section of the Portland, Oregon Terminal Area. The Portland Traction Company line is represented by a broken red line. It operates in the Southeast Portland area. This short line railroad is jointly owned by Southern Pacific Company and Union Pacific Railroad.

The Portland Terminal Railroad, which is jointly owned by Northern Pacific Railway, Southern Pacific Company and Union Pacific Railroad, appears as a solid orange line. This terminal line serves numerous industries and steamship docks in northwest Portland. All three owning railroads provide in their switching tariff that their line haul rates will apply from or to all tracks of Portland Terminal Railroad irrespective of whether or not the traffic is competitive with other railroads. Both Great Northern Railway and Spokane, Portland and Seattle Railway presently absorb the switching charges of Portland Terminal Railroad on competitive traffic.

Rail switching service in the East Portland area is furnished on Southeast Water Avenue by Portland Traction Company, on Southeast First Avenue by Southern Pacific Company, on Southeast Second Avenue by the Union Pacific Railroad and on Southeast Third Avenue by the Spokane, Portland and Seattle Railway. These lines appear on the map. The Spokane, Portland and Seattle Railway, Southern Pacific Company and Union Pacific Railroad use joint trackage across the Willamette River Bridge between East Portland and the Portland Union Station.

The map also shows the approximate city limits of Portland, Oregon, as broken orange line. The estimated outer switching limits for each line haul carrier serving Portland is shown by a solid black bar. Table 1 of Exhibit No. 57 gives in more detail the approximate switching limits for each railroad. Some of the individual railroad switching zones are bounded by railroad mile post locations, hence these boundaries can only be approximated on the map.

Table No. 2 of Exhibit No. 57 shows the points within the Portland Railroad Terminal Area where carload traffic can be interchanged between railroads under tariffs filed

with the Commission. The major railroad interchange in Portland is located west of the Willamette River adjacent to the Portland Union Station. Railroad cars are interchanged at this point between the Northern Lines (Great Northern Railway, Northern Pacific Railway and Spokane, Portland and Seattle Railway) and Southern Pacific or Union Pacific directly or via the Portland Terminal Railroad. The Portland Terminal Railroad performs switching service to industries in Northwest Portland or interchanges cars between line haul carriers on behalf of its owning railroads, Northern Pacific Railway, Southern Pacific Company and Union Pacific Railroad.

The principal interchange between Southern Pacific Company and Union Pacific by tariff is at East Portland. Southern Pacific Company, however, physically handles cars directly from or to the Union Pacific at Albina yards. Portland Traction Company also interchanges cars with other railroads, Southern Pacific Company, Spokane, Portland and Seattle Railway or Union Pacific Railroad (via Southern Pacific) at East Portland.

The major yard of the Spokane, Portland and Seattle Railway and principal point of interchange between it and Great Northern Railway, Northern Pacific Railway is at Willbridge. The Spokane, Portland & Seattle Railway and Union Pacific Railroad presently interchange cars directly with Peninsula Terminal Company at North Portland. These railroads also interchange cars between each other at North Portland. The Spokane, Portland and Seattle Railway and Union Pacific Railroad also interchange cars on some traffic at the Barnes Yard of Union Pacific in the St. Johns District. In addition, interchange is also provided between the Northern Lines (Great Northern Railway, Northern Pacific Railway and Spokane, Portland and Seattle Railway), as well as between these lines and Union Pacific at Vancouver, Washington.

By tariff provisions the through line haul rates and charges of the Northern Lines and Union Pacific Railroad presently apply to industries served by Peninsula Terminal Company. Southern Pacific Company does not presently interchange traffic with Peninsula Terminal Company but must depend upon the Spokane, Portland and Seattle Railway or Union Pacific to provide switching service between their interchange with Southern Pacific Company at Portland (Union Station) or East Portland and Peninsula Terminal Company interchange at North Portland. Item No. 200 of Southern Pacific Company Freight Tariff 230-K provides that on carload traffic from or to industries located on the tracks of Peninsula Terminal Railway at North Portland to or from points on Southern Pacific or its connections beyond Portland on which Southern Pacific Company receives a line haul, the same rates apply to industries served by Peninsula Terminal Company as apply from or to North Portland on the Union Pacific Railroad or Spokane, Portland and Seattle Railway subject to a through minimum charge of \$67.00 per car including X-256 rate increase. Under this tariff item Southern Pacific Company presently absorbs the switching charges of Peninsula Terminal Company on line haul traffic to the extent shown.

Industries located on the Peninsula Terminal Company may or may not be required to pay a switching charge to Union Pacific Railroad or Spokane, Portland and Seattle Railway for the switching movement between the Peninsula Terminal Company (North Portland) and Southern Pacific interchange (East Portland), depending upon whether joint through rates are in effect or the tariffs of Southern Pacific Company elsewhere provide for absorption of these charges. For example, a switching charge would apply on non-competitive traffic originated by Southern Pacific

Company in Oregon eastward to an industry served by Peninsula Terminal Company.

The Interstate Commerce Commission, by order served December 15, 1967, in Finance Docket 21478, "Great Northern Pacific and Burlington Lines, Inc.—Merger, etc.—Great Northern Railway Co., *et al.*" has approved the merger of the Chicago Burlington & Quincy Railway, Great Northern Railway, Northern Pacific Railway and the lease by G. N. P. & B. for ten years of the lines and properties of Spokane, Portland and Seattle Railway subject to conditions. Under these conditions the Chicago, Milwaukee, St. Paul and Pacific Railroad is accorded the right to extend its service to Portland, Oregon, over the lines of the merged company including the use of the present bridge across the Columbia River between North Portland, Oregon and Vancouver, Washington.

As shown on the sketch map, the present interchange track between applicants and Peninsula Terminal Company in North Portland is adjacent to the joint line trackage across the Columbia River. The Milwaukee's request for authority to interchange traffic directly with Peninsula, as a condition to this merger, would not require a substantial grant of additional joint trackage rights.

In addition to the five major railroads serving Portland, approximately 275 certified motor carriers also operate from, to or within Portland. Of the 275 motor carriers, 51 are regular route common carriers of general commodities. The balance of the for hire motor carriers are specialized or irregular route carriers. Of the 51 regular route common carriers 15 are large system carriers having extensive operating rights on the Pacific Coast and operate transcontinentally. These motor carriers can all serve the Rivergate industrial area, since it is located within the Portland, Oregon commercial zone.

Table No. 3 of Exhibit No. 57 shows by area served the regular route highway common carriers of general commodities operating from or to Portland, Oregon. Twenty motor carriers provide local service to points in Oregon within 50 miles of Portland. An additional ten carriers provide service from or to points in western Oregon beyond this distance. Five motor carriers are authorized to serve eastern Oregon.

There are 17 motor carriers operating between Portland and points in western Washington and 6 carriers provide service to eastern Washington, northern Idaho and Montana. Seven system carriers operate between Portland and California points. Thirteen system carriers provide service on transcontinental traffic and four of these also operate to points in Idaho and Utah.

Table 4 of Exhibit No. 57 taken from the annual reports of Peninsula Terminal Company filed with the Public Utility Commissioner of Oregon for the years 1950 through 1966 shows that the number of revenue cars handled declined substantially between 1955 and 1960. The major loss of traffic as shown on Table 5 is due to the decline in livestock business.

The annual total operating revenue of this carrier as shown on Table 4 has ranged from a high of \$161,292 in 1956 to a low of \$75,949 in 1963. The average revenue per car from switching service has gradually increased from \$7.93 per car in 1950 to \$27.71 per car in 1966. Total operating revenues include income from demurrage and other miscellaneous services in addition to switching service. The net railway operating income of Peninsula Terminal Company has ranged from \$39,253 in 1955 to a deficit of \$4,153 in 1962.

The basic data on Table 5 was obtained from Peninsula Terminal Company records under my direction by a member of the Commissioner's staff. It shows the number of cars handled and switching revenues received from both intrastate and interstate commerce.

Since 1960 Table 5 shows that traffic, other than livestock, has remained fairly constant. Livestock traffic has virtually disappeared. Total operating revenues (Table 4) declined between 1960 and 1963 but increased between 1964 and 1966. Operating expenses show no major change between 1961 and 1965 but were up in 1966. Net railway operating income was a deficit in 1962 and 1963 but has improved in the past three years.

The future need for Peninsula Terminal Company's service is closely associated with the development of the Rivergate Industrial Area by the Port of Portland. Witnesses representing the Port of Portland are testifying regarding their plans for the future development of this industrial area and their dependence upon Peninsula to provide future switching service to industries who locate at Rivergate.

Under applicants' proposal Peninsula will continue to be operated as a separate carrier; performing the physical transportation service to industries served by Peninsula with present equipment and by employees of that company. The granting of access to the present or additional interchange tracks with Peninsula by either the Milwaukee Railroad or Southern Pacific Company would provide present and future industries served by Peninsula direct access to all line haul railroads serving Portland.

The Public Utility Commissioner of Oregon favors joint ownership of Peninsula Terminal Company by all line haul railroads serving Portland.

EXHIBIT 57.

Table 1.

PORTLAND RAILROAD SWITCHING DISTRICTS.

Portland Traction Company—Between interchange tracks with Southern Pacific Company and Spokane, Portland & Seattle Railway on the north and industries located at East Portland to S. E. Cora St.

Portland Terminal Railroad—All trackage.

Peninsula Terminal Company—All Trackage.

Southern Pacific Company

From tracks of Portland Terminal Railroad Company yard on the north to Brooklyn on the south. (To a point 3570 ft. south of mile post 766; including East Portland). Also Portland (Jefferson St. Line) from Jefferson St. Station to S. W. Nebraska St. (Includes Brooklyn, East Portland, Portland (Jefferson St.) and Portland (Park St.) Switching Districts)

Spokane, Portland & Seattle Railway Co.

From tracks on S. E. 3rd Avenue north of Hawthorne Bridge on the south to Linnton on the north (Mile Post 8.37); also from tracks in Northwest Portland to North Portland (Columbia River Bridge, Mile Post 9.31, on the north); also St. Johns and Rivergate. (Includes East Portland, Linnton, East St. Johns, North Portland, Portland, Rivergate and Willbridge Switching Districts)

Union Pacific Railroad Company

From tracks of Portland Terminal Railroad on the west to N. W. 65th Avenue on the Sullivan's Gulch Line; from East Portland Interchange to St. Johns (including Terminal No. 4); from Rivergate and St. Johns to N. E. 35th St. on the Troutdale Line, including North Portland and interchange with Peninsula Terminal Company. (Includes Albina, East Portland, Kenton, North Portland, Portland, Rivergate and St. Johns Switching Districts).

Tariff Authority:

Portland Traction Company, Freight Tariff No. 1, ICC No. 27.

Portland Terminal Railroad Company, Local Freight Tariff No. 37, ICC No. 60.

Southern Pacific Company, Freight Tariff No. 230-K, ICC No. 4960.

Spokane, Portland & Seattle Ry. Co., Freight Tariff 434-Q, ICC No. 768.

Union Pacific Railroad Company, Freight Tariff No. 9000-F, ICC No. 5615.



Table 2.

POINTS OF RAILROAD INTERCHANGE WITHIN PORTLAND, OREGON RAILROAD TERMINAL AREA

<i>Interchange Point</i>	<i>Between</i>	<i>And</i>
East Portland	Portland Traction Co.	Great Northern and Northern Pacific (Via S. P. & S.) Spokane, Portland & Seattle Southern Pacific, Union Pacific (Via S. P.)
	Southern Pacific Co.	Spokane, Portland & Seattle Union Pacific
	Spokane, Portland & Seattle Railway	Union Pacific
North Portland	Peninsula Terminal Co.	Spokane, Portland & Seattle Union Pacific
	Union Pacific Railroad	Great Northern Spokane, Portland & Seattle
Portland	Portland Terminal Ry.	Spokane, Portland & Seattle Great Northern Ry.
	Southern Pacific Co. (Via Portland Terminal Railroad)	Great Northern, Northern Pacific, Spokane, Portland & Seattle, Union Pacific
	Union Pacific Railroad (Via Portland Terminal Railroad)	Great Northern, Northern Pacific, Spokane, Portland & Seattle
	Spokane, Portland & Seattle Ry.	Great Northern, Northern Pacific
	Great Northern Ry. (Via Portland Terminal Railroad)	Northern Pacific Ry.
Willbridge	Spokane, Portland & Seattle Ry.	Great Northern, Northern Pacific, Oregon Electric
Linnton	Spokane, Portland & Seattle Ry.	Oregon Electric Ry.

Source: The Official Railway Equipment Register, ICC—
BER 366 January, 1968 issue.

EXHIBIT 58.

Witness: THOMAS W. DENCH.

On the next page is Witness Dench's Map of the Portland Oregon Railroad Terminal Area.

FOLD-OUT IS TOO LARGE TO BE FILMED

EXCERPTS FROM TRANSCRIPT OF TESTIMONY.

[30] T. E. ROCHFORD

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Devers) Will you state your full name, please? A. T. E. Rochford.

Q. And your address? A. My business address?

Q. Yes, please. A. Portland Union Stockyards, North Portland, Oregon.

Q. And your occupation? [31] A. I am division president of the Portland Union Stockyards and also president of the Peninsula Terminal Company.

Q. How long have you been president of the Peninsula Terminal? A. Since 1963.

Q. How long have you been divisional president of Portland Union Stockyards? A. Since 1963.

Q. Mr. Rochford, have you prepared some written testimony for use in Finance Docket No. 24679, which is the application of S. P. and S. and the Union Pacific to acquire control of the stock? A. Right.

Q. Have you been present during the course of this hearing so far? A. Yes, sir.

Q. I hand you, Mr. Rochford, a statement which has been identified for the purpose of this hearing as Exhibit

24. Do you have that before you? A. Yes, sir.

Q. Is this the statement to which you just referred? A. Yes, sir.

Q. Are the facts stated in this prepared testimony and the information and the data covered by that statement, are they true and correct to your best knowledge, information, and belief? A. Yes, they are.

[34] Q. I take it from your Exhibit 24, your testimony in this proceeding, that your company is well satisfied with the selling price that you are receiving for the stock of the Peninsula Terminal, is that correct? A. Yes.

Q. Your company really doesn't care who purchases the Peninsula Terminal, do they, sir? A. Who owns the stock?

Q. Yes, sir. A. Well, I can't visualize any reason why we should.

Q. As long as you get your money you are happy, are you not? A. That's right.

* * *

[38] Q. Will you look down on Page 10 to the last sentence of that first incomplete paragraph at the top where you indicate that Peninsula is neutral where the choice of main line movement is involved? Do you see that, sir? A. Yes, sir.

Q. Isn't it a fact insofar as your company is concerned you are neutral insofar as who should buy your stock so long as you get your price, isn't that a fact? * * * A. Yes.

[39] Q. (By Mr. Wilson) Was any consideration given in arriving at the value, what they paid for the stock, for the strategic value of the Peninsula Terminal in being physically able to serve the Rivergate area? A. The value was arrived at through an appraisal.

Q. Yes, sir. My question is, did that appraisal take into account any factor in the strategic position of the Peninsula Terminal in being able to serve the Rivergate area? A. I don't know that.

Q. Who in your company would know that, sir, in acquiescing to this purchase price? A. I don't know that anyone in my company would, other than the appraisal company.

* * *

CROSS EXAMINATION.

[41]

* * *

[43] Q. Do you have an agreement with the S. P. and S., Union Pacific, Northern Pacific, and Great Northern covering the joint operation of the North Portland interchange track? A. Yes. I do not have them with me. I am not 100 percent familiar with them.

Q. But you do have them in your possession here in Portland in your office, a copy of that agreement? A. Yes.

Q. You say you have also been a neutral as to the trunk line connecting with the Peninsula Terminal Company. If, for example, the Milwaukee Railroad were operating into Portland at the present time, would you also be neutral with respect to the Milwaukee Railroad? A. Surely.

Q. Pardon? A. Surely.

Q. After you become the manager of it and it is owned by the S. P. and S. and the Union Pacific, would you be required to follow the policies as to the neutrality as between them which would be dictated by the owning lines?

[44] A. I can see no reason why or where there would be any field for myself as an operating agent of the owners to be anything but neutral.

Q. As between the two owners? A. As among any one involved.

Q. Would you take your orders and directions from the owning lines as to what your policy would be after they controlled the Peninsula Terminal Company? A. The owning lines?

Q. Yes. A. I would naturally presumably have to, yes, if we were a managing agent.

Q. Then your neutrality would be in favor of the owning lines, would it not?

* * *

A. I would take my orders from the owning lines.

* * *

[51]

WILLIAM A. KAVET

was sworn and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Weisser) Will you state your name, please?

A. My name is William A. Kavet.

* * *

CROSS EXAMINATION

* * *

[56] Q. Would you turn, please, to Page 5 of your Exhibit 25 for identification. I am referring to the last paragraph. In making that statement that the acquisition of Peninsula by the U. P. and the S. P. and S. would best serve the needs of the area for rail transportation, did you take into consideration the development of the Rivergate area?

A. Of course I am talking now about the present day.

Q. The answer to my question is, no, you did not take the Rivergate area into consideration? A. No.

Q. You did not? A. Did not.

Q. Did you take the interest of the public in transportation into the Rivergate area into consideration? A. I didn't consider the Rivergate area.

Q. Did you consider the public at all as opposed to the interest of the U. P. and the S. P. and S.? A. As to whether they were being served adequately, you mean?

[57] Q. Yes. A. Yes, I did..

Q. Are you telling me that it is your belief that the public is best served by the Southern Pacific not reaching the Peninsula Terminal?

* * *

A. Perhaps instead of "best" it should be "adequate".

Q. (By Mr. Wilson) I am sorry, I didn't hear you. A. "Adequately serves the area".

* * *

Q. In other words, if all the railroads in Portland served [58] the Rivergate area that would be to the public's benefit?

Mr. Weisser: I object to that. It is argumentative.

Exam. Shoup: Overruled.

Q. (By Mr. Wilson) Do you have the question in mind?

(The record was read by the reporter, as follows:

"Question: But it would be better served if the S. P. also reached the Peninsula Terminal, wouldn't it?")

Q. (By Mr. Wilson) Would you agree with that statement? A. Yes.

* * *

[60] Q. How many cars a day would you say are interchanged to the Peninsula Terminal Company at North Portland? A. I don't know exactly.

Q. What is the range? [61] A. Oh, ten to twenty.

* * *

Q. That would be in two different deliveries, or is that in and out, would you tell me about it? A. You are talking about delivery only?

Q. I am talking about deliveries, first. A. It could be several at once, and it could be five or six times a day, depending upon the circumstances. Generally there would be four deliveries a day.

Q. By the S. P. and S.? A. And the U. P.

Q. And the U. P.? A. Yes.

Q. Each four, or four by all of them? A. By all of them.

Q. I don't think I understand you. A. Two apiece.

Q. Two apiece? A. Yes.

Q. And there are two pickups a day also? A. Generally it depends on the volume and what have you.

Q. The Union Pacific picks up from Peninsula and takes it down to Albina Yard. Is that how they go? A. Indirectly. They could. There are various ways they [62] could pick it up. There is a Kenton engine. A Kenton engine could pick up and either take the cars to Kenton or hold them at the pass.

Q. Pardon? Where is the pass? A. At the north end of the tunnel along Columbia Boulevard.

Q. They hold them there and separate them out there? A. They could hold them there or take them to Kenton, or take the car to Albina direct.

Q. That is what they pick at at Peninsula? A. Yes.

* * *

Q. Would you have any idea from what yard they make the delivery to the Peninsula Terminal? A. Well, it could, again it could, it very easily could be an engine out of Albina.

Q. What does the S. P. and S. do when they pick up the cars on the interchange? A. The S. P. and S. usually, when they make a pickup, take the cars to Vancouver.

Q. How do they make delivery? A. Usually an engine from Vancouver or from Portland.

* * *

[66] Q. Isn't this the practice you usually follow, the shipper will call upon the trunk line to furnish him a car and they will arrange with you to spot the car via Peninsula Terminal? A. The shipper calls on the trunk lines.

Q. Yes, for the cars, does he not? A. No, he calls our yard office for a car.

Q. For a car. Does he specify what railroad? A. Yes.

Q. So you call on that railroad to furnish a car? A. Yes.

Q. The Peninsula Terminal Company supplies no car at all? A. That is correct.

[70] Q. What is the meaning of the second sentence in that paragraph, "The major portion of business handled is between the S. P. and S., G. N., and N. P. for industries located in Zone 6 of the Portland switching district"? A. The 39 per cent for the Peninsula Terminal Company and the other portion is for the Union Pacific industries in Zone 6.

Q. Other than the Peninsula Terminal business through the North Portland interchange, is all the rest of the business local switching traffic? A. Yes. There is some zone switching from one zone to the other but I don't know if I understand the question.

Q. I am looking at your third sentence. None of this business is through freight or cars being passed? [71] A. right.

Q. Then it is all local business? A. It is all consigned or originates from this area.

[73] Q. Mr. Kavet, with this small number of 30 cars a day, do you find that the U. P. and the S. P. and S., which you testified handle these cars for the connecting railroads, line haul, do you find they handle their business as efficiently and effectually as they do their own? A. Yes.

[74] Q. (By Mr. Green) Mr. Kavet, it seems that there was a discussion about your receiving calls about the handling of cars. I don't know who they were for, S. P., N. P., U. P., or who. On the basis of these calls, do you get calls mostly for S. P. business, N. P. business, G. N.

business; or S. P. and S. [75] business, or are they approximately the same? A. I don't know what portion the cars are for.

Q. You must know the destination of the cars or where they are from or where they are going to. Is it the S. P. business that is having this trouble? A. I really don't receive enough calls to make any distinction between them.

* * *

[76] Q. Concerning the complaints about delays in handling, you mentioned that you thought a two- or three-day delay was a real bad delay. Was this answer directed solely to S. P. and S. business? A. No.

Q. This was business in general? A. Yes.

Q. How many times a year would you have a complaint concerning a delay of that nature? [77] A. I guess six to eight a year.

Q. Of those do you know how many would be S. P.? A. No.

Q. Have you ever gotten a response when you have traced an S. P. car that has involved a delay of this nature which would indicate that it was still in the Brooklyn Yard?

* * *

A. Yes.

Q. (By Mr. Weisser) The Brooklyn Yard, is that the yard of Southern Pacific at Portland? A. Yes.

Q. Have you ever been tracing an S. P. car handled through U. P. and gotten an indication that Southern Pacific has failed to designate where the cars are to go?

A. Yes, but the Southern Pacific said then they also designated where the cars were to go. There is an argument.

* * *

[78] Exam. Shoup: The Examiner has one question with respect to this 61 per cent. Your statement indicates 39 per cent of the cars interchanged through North Portland as being Peninsula business. Is the balance, the 61 per cent, of the business handled directly by designated carriers serving North Portland?

The Witness: Yes. The others, we are talking about cars interchanging, cars either interchanging S. P. and S., G. N., N. P. to the Union Pacific or to the Peninsula grounds. Cars from the Union Pacific are interchanged Union Pacific to the S. P. and S., G. N., and N. P. and also to the Peninsula Terminal. Now, the 39 per cent are cars off the three roads, S. P. and S., G. N., and N. P. to the P. T., also U. P. to the P. T. These are the 39 per cent.

Exam. Shoup: If there were no Peninsula Terminal Company at all, would the other 61 per cent of the cars be handled directly by these line carriers?

The Witness: Yes.

* * *

[79] N. S. WESTERGARD
was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Devers) Will you please state your full name? A. My name is N. S. Westergard.

Q. What is your business address? A. 1112 American Bank Building, Portland, Oregon.

Q. What is your occupation? A. I am vice-president and general manager of the S. P. and S. Railway.

Q. How long have you held that position? A. Since 1960.

Q. Have you been present during the course of this hearing, Mr. Westergard? A. Yes.

Q. Have you prepared for use in this hearing a written statement which has been identified as Exhibit No. 26? [80] A. Yes, sir.

Q. Are the statements and the information contained in that exhibit accurate, true and correct, to the best of your knowledge and belief? A. Yes.

* * *

CROSS EXAMINATION

* * *

[87] Q. * * * As an operating man would you be satisfied if you found that it took 24 hours plus to move six miles? A. I wouldn't be satisfied, no.

* * *

[91] Q. Haven't you in your plans made some provision for the potential growth of the Rivergate areas and the use of the Peninsula Terminal as a carrier? A. Not exactly, no. The plans for the development of Rivergate are long range, and I don't believe that there is any hard, fast [92] plans that have been made. We are flexible.

Q. But you certainly realize that changes will definitely have to be made in the Peninsula trackage when the Rivergate area opens up, don't you, sir? A. I believe I said that in my statement.

Q. So you would agree with that? A. Yes.

Q. That would probably include putting an additional interchange tracks, would it not? A. It could.

Q. It could also lead to the owning companies actually operating the Peninsula Terminal, could it not, at some future date? A. That, again, is possible, but unlikely.

Q. Why do you say it is unlikely? A. Even though we improved that property and trackage, I don't visualize

that each one of us, that is, the Union Pacific and the S. P. and S. are going to operate on it.

Q. Why not? A. Well, maybe this is oversimplifying, but I would rather have one engine in there with four cars than I would four engines and one car.

Q. How about a unit train? A. The same thing, the same theory applies.

Q. Wouldn't it be simpler to have the Union Pacific or the S. P. and S. bring the unit train right into the destination? [93] A. Not in the case of Peninsula Terminal, I don't think it would.

Q. Why, because of its physical capabilities, the rate it would have, and that type of thing? A. That is part of it.

Q. You would certainly say that, wouldn't you, sir, if the Rivergate Area were developed? A. We would make studies to determine whether it is economically desirable.

* * *

Q. If your railroad were not an owner of the Peninsula Terminal it would have no voice in the development of the Peninsula Terminal to serve the Rivergate area, isn't that a fact? A. I don't think that is a fact, no.

Q. How would a railroad that is not an owner have any voice in what the Peninsula Terminal decides to do? [94] A. I think the way is always open between railroads to negotiate for some arrangements.

Q. Would the S. P. and S. or the U. P. be willing to negotiate today for the trackage rights of the Southern Pacific to reach the Peninsula Terminal? Is the door open on that? A. They are willing to discuss any proposal that you might offer.

* * *

[95] Q. If we were to work out some transaction where Southern Pacific [96] did work over the trackage of S. P. and S. to reach the Peninsula Terminal Company, would

that be in the public interest in your view? A. I don't feel that it would necessarily, no.

Q. Why not? A. Because I don't see that it is in the public interest to have equipment or locomotives of more companies than are needed to adequately serve the public in an area, operating into an area. It could be detrimental to the public in that it could add to the congestion. Basically, I assume that it is the same traffic that will be handled. I grant this; that as an area grows there will be a growth in traffic, but at any given time you assume there is that traffic going into that area, and to have locomotives of four companies handling it instead of one, to me I don't see that that is in the public interest.

[102] Q. (By Mr. Ploeger) I am Warren Ploeger of the Milwaukee.

I would like to have you turn to the map attached to your statement on Exhibit No. 26. The green trackage shown on the right of the exhibit is the S. P. and S. N. P. line across the Columbia River from Vancouver? A. Yes.

Q. And that is a double track line? A. Yes, it is.

Q. Then as we get to the center of the map or just past, it shows that the O. W. R. and N. track takes off and that track moves on down to Albina, is that correct? A. Yes.

Q. And also connects with the Union Pacific's east and west main line, is that correct? A. I don't know.

Q. The one that takes off at Head Block, at Station 93 plus 54.2? A. Yes.

Q. And the green line going on beyond is the line to the [103] extent of the S. P. and S. and Northern Pacific extended to Willbridge? A. That is right.

Q. That is on the other side of the Willamette River? A. Yes, sir.

Q. This same green trackage that is shown on here is the trackage that the Milwaukee will be operating under or over if the Northern Pacific, Great Northern and Burlington are merged and they operate the properties of the S. P. and S., is that not true? A. If they choose to do so, yes.

Q. If they choose to exercise that right? A. Yes.

Q. Therefore, if the Milwaukee chooses to exercise these rights, they will be moving over the green trackage all the way through into Willbridge and thence into Hoyt Street Yard at Portland? A. They may.

Q. The Milwaukee trains will be operated by Milwaukee personnel, it is my understanding. Is that your understanding? A. That is my understanding, yes.

Q. And the trackage shown in purple on this map which extends from the Head Block, which I believe to be 92 plus 99 shown on the map— A. (Interrupting) Yes.

[104] Q. (Continuing)—extends to a connection with the interchange tract from the S. P. and S. main line, is that correct? A. Yes.

Q. That purple piece of track is owned jointly by the S. P. and L, the N. P., and the O. W. R. and N.? A. Yes.

Q. The yellow trackage is owned jointly by the Peninsula Terminal Company, one half, and the other half owned jointly by the S. P. and S., the N. P. and the O. W. R. and N.? A. Yes.

Q. The outside interchange tracks are owned jointly by the S. P. and S. the N. P., and the O. W. R. and N., is that correct? A. That is right.

Q. That is tracks 1 and 4? A. Their ownership is indicated on this exhibit.

Q. And that is correct? A. Yes.

Q. On that map you show Western Wax Paper. Is that a Crown-Zollerbach operation, too? A. Yes.

Q. You show up there and beyond trackage. You have a spur into the Portland Pole yard. Is that a Crown Zollerbach operation, also? A. Yes.

Q. Does the S. P. and S. or the N. P. have the power to grant to [105] the Milwaukee the operating rights over the purple trackage shown on that map at present? A. I don't know whether they do or not.

Q. You have the agreement covering this trackage.
A. Coverage—

Q. (Interrupting) The trackage shown in purple. A. I have read them, yes.

Q. Do you have them with you? A. I believe I do have some of them with me.

Q. Do you have them with you? A. I am not certain just what agreements you are referring to there. There are several agreements covering these tracks.

Q. How many are there and what is the date of them, if you know? A. I think that is listed in our application.

Q. These agreements to which Peninsula Terminal Company is the party? A. I thought that was what you were referring to when you mentioned going up here to Crown Zellerbach.

Q. I wanted to cover these North Portland interchange tracks. Do you have an agreement between the northern lines or the S. P. and S., the Union Pacific and the Peninsula Terminal Company covering the North Portland interchange tracks? A. Yes.

Q. Is that the agreement of August 31, 1938, that is supplement [106] in 1952 and '55? A. Yes.

Q. Then you also have an agreement of 1954, September 7, covering the operation of the yard office? A. Yes.

Q. Do you have an agreement covering 1936, the per diem car hiring arrangement? A. Yes.

Exam. Shoup: We will take a five-minute recess.
(Short recess.)

Exam. Shoup: On the record.

Q. (By Mr. Ploeger) We named off some of the agreements which the Peninsula Terminal Company is a party. Do you have those agreements with you in the hearing room? A. I am not sure I have them all.

Q. Do you have any objection to my looking at those agreements?

Mr. Devers: What was the question?

(Question read.)

Mr. Devers: I will interpose an objection to the question, because I think it may lead to a demand for the agreements, some of the agreements which the Milwaukee was asking for in the subpoena *duces tecum*, which they requested the Commission to issue and which the Commission denied. So when he reaches a point of asking for them, we will object, and I think it would be consistent with the Commission's order.

[107] Mr. Ploeger: I might say that the Examiner has the authority to issue the subpoena, and I might call upon the Examiner for that exercise of authority at the proper time. I am not doing so now. I am just asking if there is any objection to furnishing me with the agreements so we might look at the terms of them which will aid in the examination of this witness. If counsel feels that this is confidential information, I think he can object on that basis, however, they have been referred to in the testimony and they have been referred to in the application.

Mr. Devers: I have made my objection, Mr. Examiner.

Mr. Ploeger: To what are you objecting?

Mr. Devers: I am objecting to the question you put to the witness.

Mr. Ploeger: The question is if the witness has any objection to furnishing the agreements.

Exam. Shoup: The witness may answer the question.

A. I object to furnishing them, yes.

Exam. Shoup: The Examiner isn't going to require the production of those agreements in this proceeding by subpoena or otherwise. The applicants have certain responsibilities and certain standards of proof which must be met.

That is the Examiner's reply to it.

Mr. Ploeger: You are going to rule in advance before I make the request?

[108] Exam. Shoup: Yes, sir, that is the way it goes right now.

Q. (By Mr. Ploeger) Are there also agreements between the S. P. and S., the Union Pacific, the Northern Pacific and the Great Northern for the use of the interchange tracks shown in yellow and purple on this exhibit or map exhibit attached to your Exhibit 26? A. Yes.

Q. Does the Great Northern have trackage rights over that connecting track and the interchange tracks? A. Their rights have been indicated in there, yes.

Q. What does that mean? A. Just what I say, they are accepted as having rights in there.

Q. Does the contract so provide, or any of the contracts? A. I can't recall now.

Q. Do you know what the contract says about these interchange tracks? A. In a general way, but I wouldn't try to detail those agreements from memory.

Q. Has the G. N. ever physically operated on those interchange tracks or that connecting track? A. On rare occasions.

Q. But they have the right to do so? A. They have been in there.

Q. And you figure they have done so under some kind of an [109] agreement? A. Understanding.

Exam. Shoup: Counsel, to what tracks are you referring?

Mr. Ploeger: I am referring to the connecting track that extends from Head Block 93 plus 24 of the green on S. P. and S. main line to the so-called interchange track which I take it would be shown in purple and yellow on this map, and which extends down someplace in the neighborhood of the end of curve station 66 plus 60.8.

Q. (By Mr. Ploeger) Has the N. P. ever operated any engines and equipment other than cars on the interchange tracks? A. Rarely.

Q. But they have an ownership right, is that correct? A. Yes, they have an ownership track.

Q. But the Great Northern does not have an ownership? A. No.

Q. In fact, is it not true that the S. P. and S. under contract with the Northern Pacific and with the Great Northern actually handles with its engines and crews the N. P. and Great Northern cars to the interchange track with Peninsula there? A. Yes.

Q. And also with interchange to the Union Pacific? A. Yes.

Q. That is to avoid the necessity of duplicate engines [110] switching there? A. Yes.

Q. Is that under an operating agreement, also, in writing? A. Yes, the charge that they pay for the service is spelled out in the operating agreement.

Q. Now, Mr. Westergard, if the Milwaukee were operating into Portland over the track in green, what is your understanding as to how the Milwaukee cars will get to the Peninsula Terminal? A. I really don't have any understanding today.

Q. How would you assume, then, or how would you figure out how they would get to Peninsula Terminal, as an operating man? A. I believe you are, as I read the contract and the conditions of the I. C. C. in the merger, that you will ask for the rights that you want, and then we will negotiate, and until I know what you ask for I don't assume how you are going to get it.

Have you seen the agreement between the Milwaukee Railroad and the principals in the Great Northern, Northern Pacific, Burlington merger? A. Yes.

[111] Q. (By Mr. Ploeger) How do you understand, sir, that the Milwaukee will be delivering cars to Peninsula Terminal Company under the agreement with the northern lines and the Milwaukee? A. I don't have any understanding.

Q. You are not qualified to have come to any conclusion as to how the interchange at Peninsula Terminal will actually take place? A. As I see it, Mr. Ploeger, there is more than one way that it would be possible.

Q. What are some of those ways? A. One way that might be possible is, as I understand your petition, you want to run right down there and deliver them and pick up.

[112] Q. Could they make any deliveries at the north Portland interchange track if they did not have trackage rights on the track which included the connecting track? A. I would say no.

Q. Nor could they contract with anybody else to perform that kind of service, could they? A. That would take an understanding, also.

Q. Is it your understanding that if the Milwaukee had trackage rights over that interchange trackage and the North Portland interchange tracks, that necessarily would

be so that the Milwaukee would be running engines and cabooses in there with its own crews? A. Not necessarily.

Q. Why did you testify in your amended testimony that it would take additional trackage if the Milwaukee were to make delivery of cars at the North Portland interchange?

A. I understood that was what you were petitioning for.

Q. If we petitioned for and got through the Commission the approval of operating rights over the connecting track and interchange track, and then contracted with the northern lines to deliver the cars on those tracks for us under an operating arrangement with their crews, would that cause any additional congestion? A. No.

[113] Q. And it would not require any additional trackage, would it? A. Assuming that it didn't generate any more traffic, it wouldn't require any more trackage.

Q. Is your contention or your belief that the Milwaukee's operations into Portland will bring additional traffic to Portland and the Peninsula Terminal Railroad? A. I don't foresee that it, in itself, is going to make any appreciable increase in the traffic to Peninsula Terminal.

Q. You testified in the northern lines case, did you not, as a witness for the S. P. and S. Railroad, the northern lines merger case? A. No.

Q. You did not testify? A. No.

Q. But you attended many of the hearings, did you not? A. Yes.

Q. You are fully familiar with the operating plan? A. I have information on it.

Q. And you have in recent months been giving some consideration to how you are going to operate if the merger is ultimately consummated? A. Yes.

Q. In that connection is it not true that there will be less traffic over the line shown in green after the merger than there is now? [114] A. No, I don't believe so.

Q. Is that the intention of the merged company, to handle additional volume of traffic that now moves through Portland by either Klamath Falls or Beaver, California?

A. There will be many changes in traffic patterns as a result of the merger. I don't recall that their studies indicated any material decrease in the volume of traffic moving between Willbridge and Vancouver.

Q. Do you see any reason why, as an operating man, the Great Northern, Northern Pacific, Burlington lines could not, acting under a joint arrangement, handle the Milwaukee traffic as an agent of the Milwaukee as its agent to and from the North Portland interchange tracks and over that connecting track if the Milwaukee had trackage rights over there? A. It is physically possible, yes.

Q. Is there any objection that you can think of besides the fact that it is physically possible? A. I don't know how I can say it any differently than what I have said before that there is an objection. The more movements in and out of those tracks, and I am not thinking just of the movement within the trackage, I am thinking of the movements on this green track, every movement, whether it is one car or fifty cars, when they stop they interfere with the other traffic that is moved on the green track. The more movement there is, the more interference there is and the more [115] congestion. It leads to more congestion.

Q. And the more business you have, that also leads to the same thing? A. I say this, even assuming that the business, that the carload traffic, is about the same, but if you are handling it in two or three movements when you could be handling it in one, there are three trains stopped out there instead of one.

Q. Is there any reason why the Great Northern, Northern Pacific and Burlington lines would not handle Milwaukee cars exactly the same way they handle Great Northern and Northern Pacific cars, that is, the S. P. and S. does?

A. I think they are all cars of the same type and class, and there isn't any reason why we couldn't couple onto a Milwaukee car the same as we do a Great Northern and Northern Pacific.

Q. Does the S. P. and S. do switching at Vancouver for all lines including the Union Pacific? A. Yes.

Q. Is it the intention that the S. P. and S. will perform switching at Milwaukee's request to Vancouver on the same basis? A. I assume so.

Q. When the Peninsula Terminal Company first approached the S. P. and S., whom did they approach?

A. Individual, you mean?

Q. Yes. [116] A. I might have been the first one, I don't know.

Q. What was their proposal, to sell you the trackage and facilities of the Terminal Company or the stock? A. It wasn't a proposal, it was just a casual conversation.

Q. An inquiry as to whether you were interested? A. Yes.

Q. Who told the Union Pacific that you were thinking of buying the Peninsula Terminal? A. I don't know whether that was Mr. Budd or Mr. Menk or Mr. Macfarlane.

* * *

Q. Did you have any conversation with the Union Pacific about their joint ownership of Peninsula Terminal? [117] A. Yes, we have had conversations.

Q. What reasons did they give you for wanting joint ownership with the S. P. and S. and Peninsula Terminal?

A. The reasons that were advanced, as I recall, were that because of this association that we had over the years and that exists even today in our connection into the Peninsula Terminal, that they felt that that same relationship should extend into the ownership of Peninsula Terminal in the event that we acquired that property.

Q. Don't you think that you could operate it, the S. P. and S. could own it and operate it just as well as an independent company or the northern lines without joint ownership with the Union Pacific as if they did have joint ownership with them? A. That was our original intent.

Q. Yes, but the Union Pacific, did they object to you having ownership solely in the S. P. and S.? A. They asked to join with us in acquiring it.

Q. The Peninsula Terminal? A. Yes, sir.

Q. Did they express an opinion to you or anybody in the S. P. and S. that you know of that if they did not have a joint ownership of that company, the Peninsula Terminal, that the Peninsula Terminal would be at a disadvantage with the northern lines on the S. P. and S.? [118] A. Not to my knowledge.

Q. Do you think it would be to the advantage of the S. P. and S. to have sole ownership of the Peninsula Terminal rather than joint ownership? A. I think this, that a single ownership is simpler than two, and two is simpler than three or four. I think it follows.

Q. Why, then, did you agree that the Union Pacific should have joint ownership? A. I didn't make that decision.

Q. You do not know why? A. I think I do. Those that did make the decision saw some justification or some good reason in the Union Pacific's request and they decided to go along with their request.

Q. Did they indicate that if they didn't have joint ownership in the Terminal Company they would petition for ownership? A. Not that I know of.

• • •

[119] Q. North Portland is in the Portland switching district, is it not? A. Yes.

• • •

[120] Q. You could obtain trackage rights from Peninsula Terminal as owning lines, could you not? A. As owners we could obtain trackage rights on Peninsula Terminal?

Q. Yes. A. I would say yes.

[121] Q. You have an operation now extending from this main track shown in green, but off the map to the left down there where you pass over the Union Pacific's east-west line, do you not? A. Yes.

Q. Then you have a connecting track with the Union Pacific Barnes yard? A. Yes.

Q. That is an S. P. and S. connecting track? [122] A. Yes.

Q. Then does the Great Northern and Northern Pacific also have trackage rights over that? A. No.

Q. Just the S. P. and S.? A. Yes.

Q. Does the S. P. and S. have trackage in the Barnes Yard at Union Pacific?

Q. (By Mr. Ploeger) Do you have trackage in the Barnes Yard? A. By "having", do you mean do we own?

[123] Q. Yes, do you have trackage rights on certain tracks in the Union Pacific's Barnes Yard? A. Yes, we pay for the record.

Q. Do you have trackage rights over the tracks of the Union Pacific to Terminal 4? A. Yes.

Q. Do you have trackage rights or do you jointly own, tell me which, trackage extending from Barnes Yard to the Terminal 4 track out to the Rivergate Industrial area now? A. Yes.

Q. Do you own it jointly with Union Pacific? A. Yes.

Q. Has an agreement been reached on that, its use and operation? A. Yes.

[124] A. The agreement covering the jointly owned trackage extending from the connection between Barnes Yard and the Port of Portland property, that agreement has been executed. That is consummated.

Q. Is that jointly owned track of S. P. and S. and Union Pacific? A. That is right.

Q. Then the trackage beyond that to the Gilmore Street is owned by the Port of Portland? A. They built it.

Q. They own it? A. I assume so.

Q. So the S. P. and S. and Union Pacific already have access to the Rivergate Yard, the industrial area, from the south, do they not? A. Yes.

Q. Of course, Peninsula Terminal will also give them access and control of the entrance of the Rivergate district from the north, is that not true? A. Yes.

Q. In order to get to the S. P. and S. trackage from Barnes Yard to the Rivergate district, the S. P. and S. operates over Union Pacific tracks? A. Just to make a delivery and pickup.

Q. Then you have a joint facility arrangement beyond there? [125] A. Yes.

Q. Where the Union Pacific handles S. P. and S. cars for them? A. Yes.

Q. On a per car cost based on the pro rata expense, is that correct? A. Yes; it is a flat rate, but it is based on it.

Q. It is eight dollars a car, isn't it? A. It is eight dollars a car to Terminal 4.

Q. How much a car to Rivergate? A. That is twelve dollars.

[128] Q. (By Mr. Ploeger) Mr. Westergard, on Page 10 of your testimony you state that in your opinion the growth of the Rivergate will require certain changes in the Peninsula Terminal track in order to serve the Rivergate

area and that you have given consideration to the construction of a new track direct from the S. P. & S. main line to Rivergate and that you have given assurance that you would provide, that the S. P. & S. and the Union Pacific would provide, a joint service similar to that provided in connection with the line via Barnes Yard, is that true?

A. Yes, sir.

Q. Of course you had a contract for a long time outstanding, have you not, to serve Terminal 4, that is Municipal Terminal 4 which is south of the Rivergate on the Willamette? A. Yes, we have.

Q. That agreement is the agreement of October 6, 1921?

A. I believe that's the date, yes.

Q. That covers the construction of the track from the west side of your main track near Barnes Yard into Barnes Yard, that agreement? [129] A. That track was constructed in order to make that agreement effective, yes.

Q. It also covers the use of two tracks in Barnes Yard of the Union Pacific? A. Yes.

Q. It also covers the operation by S. P. & S. over the track Barnes Yard to Terminal 4? A. Yes.

Q. It also provides, then, in lieu of your actual handling with your engines and crews the handling by U. P. from Barnes Yard to Terminal 4? A. Yes, sir.

Q. That is the one you mentioned would be \$8 a car is the charge? A. It's now \$8. That agreement has been supplemented several times. The most recent is now of that rate.

Q. And that's \$8 a carload or empty or just loaded?

A. It's loaded or empty, it's \$8 each way.

Q. That contract was supplemented, was it not, in 1967?

A. Yes.

Q. In 1967 it made provision for use of your trackage from the west side of your main track near Barnes Yard

into Barnes Yard and the use of the two tracks in Barnes Yard also for the purpose of serving Rivergate, does it not?

A. I don't recall whether it's that agreement you are referring [130] to or another one that provides for the use of track in Barnes Yard.

Q. I am talking about your amendment dated May 26, 1967. A. Yes.

Q. And that contract is effective from and after a date in 1963? A. I think that's right, yes.

Q. You have been negotiating for or giving consideration to either constructing your own track or the track from Barnes Yard to the Rivergate Industrial area for several years, have you not? A. Yes.

Q. It's been on the expected development of that area? A. Yes.

Q. Have you made some studies during the same period about extending a track from the west side of your main track in the vicinity of the North Portland Junction into Rivergate? A. Yes, we have made some horseback estimates.

Q. Would that be a new track rather than a Peninsula Terminal Company's? A. One such estimate was based on an entirely new track direct from the S. P. & S. main line.

[131] Q. You also have entered into a contract, did you not, with the Union Pacific covering the construction and operation of the track from Barnes Yard to the boundary of the Rivergate Industrial District? [132] A. Yes.

Q. What is the date of that contract?—A. You mean when was it signed?

Q. Yes. A. It was early in—I think it was around May in 1967.

Q. The same date that you revised the Terminal 4 agreement? A. The same date we executed it, yes.

Q. Do you have a copy of that agreement with you covering the Rivergate extension from Barnes Yard? A. Yes.

Q. Will you please get it out.

[135] Q. (By Mr. Ploeger) Is your answer that Paragraph 9 is the [136] same as in the original contract that you have? A. I think it is.

Mr. Devers: What is the date of the contract?

Q. (By Mr. Ploeger) What is the date of the contract that you are referring to, sir?

Mr. Ploeger: I thought he answered it May 26.

Mr. Devers; You have been handing the contract around.

Q. (By Mr. Ploeger) The date of the contract you have is May 26? A. I don't see any date on the contract that I have.

Q. I am asking if the contract I had is the same as the contract you have before you, it is, is it not? A. Yes.

Q. I would like to have you look at Section 6 of Article I on Page 2 of your contract, and would you compare that with the one I have here in my hand? A. Yes.

Q. Is it not a fact, Mr. Westergard, that Article 9, Section 1 of the contract to which you have reference between the Union Pacific and S. P. & S. provided that if any other, that if the Rivergate Industrial District or any part thereof or any properties of the Rivergate District or the rest of the S. P. & S. main line is served by trackage extending from the S. P. & S. main line the Portland Company, that is the S. P. & S., will be required to admit the Union Pacific to that trackage by joined owner- [137] ship and use thereof on determining substantially as set forth in this agreement of May 26, 1960, to which you are making reference? A. That is the sum and substance of it, yes.

Q. Does it not also provide in Section 6 of Article 1, Page 2 thereof—

Mr. Devers (interrupting): Mr. Examiner, to shorten this, and without waiving any objection that I may make to the efforts to introduce other contracts, I am willing to withdraw any objection to this contract and allow the witness to put it in.

Q. (By Mr. Ploeger) At any rate, the contract that you are referring to provides that neither the S. P. & S. or the Union Pacific shall, without the consent of the other, admit any other carrier to the trackage extending from Barnes Yard to Rivergate, isn't that true? A. To the jointly owned track that we construct.

Q. Yes. The contract requires that you will not let anybody in on any of the new, on any new construction that may be in the future or upon the existing trackage from Barnes Yard to Rivergate without the consent of the other party, doesn't it? [138] A. That is right.

Q. That's the effect of it? A. Yes.

Mr. Ploeger: It's probably a matter of interpretation.

Q. (By Mr. Ploeger) Do you interpret that contract also as requiring if the S. P. & S. acquired the Peninsula Terminal Company independently that you would be required under the terms of this agreement to permit the

Union Pacific in on the Peninsula Terminal Company? A. This particular agreement, as I said before, when it was initiated I at least never thought in terms of Peninsula Terminal. This provision for an access, if and when it became desirable, was the request and desire of the Port of Portland to assume them of the same sort of service that we

were giving them at the west end of the Rivergate development if and when they saw fit to go to the east end of the development and start in, that they would get the same kind of service from the rails there that they were getting down at the west end. This started earlier, the negotiations commenced, I believe, around 1958, 1959, with the Port of Portland. The provision that is made there that Section 9 is backed up by a letter, a joint letter [139] that was given by the general manager of Union Pacific and the general manager of the S. P. & S. to the president of the Port of Portland.

Q. What you offered the port was to give them the exact same arrangements that you have covering the track from Barnes Yard to Rivergate if a new track was built or acquired from North Portland Junction or someplace in that vicinity? A. It was to assure them that no matter where they initiated the development of this whole big Rivergate area that they could have joint rail service into it.

Q. What do you mean by joint rail service, S. P. & S. and U. P. and nobody else, is that true? A. No, sir; Northern Pacific and Great Northern.

Q. It's true the S. P. & S. is owned jointly by the G. N. and Northern Pacific, it's jointly owned by them? A. They are separate carriers but they jointly own the S. P. & S.

Q. All your contract, the Rivergate extension from Barnes Yard and Terminal 4, provides specifically that S. P. & S. cars will include G. N. and N. P. cars, does it not?

A. That is right, but it's the joint service by four trunk lines.

Q. That's right, but what other carriers did you have in mind who might be nonparties to this agreement at the time you drew it in 1967 or executed it? A. I didn't have any in mind

[140] Q. What other carriers could reach either any new tracks or the Barnes Yard to Rivergate trackage at the time you drew this agreement? A. None.

Q. So that you weren't really concerned about any existing carriers in Portland, were you? A. Not in drawing up that contract, no.

Q. Why did you put that provision in there that no nonparty to this agreement shall have operating rights over any of this trackage without the consent of the other if there were not carriers in the area serving it? A. I think it's more or less a standard clause.

Q. You mean it had no purpose at all, somebody put it in there with no purpose at all. A. I imagine some lawyer put it in there.

Q. Of course you knew when the contract was signed, did you not, that the Northern Lines Merger was likely to be approved and it was also likely that the Milwaukee would get the Portland condition if it was approved, don't you think you had that in mind when you discussed that on behalf of the S. P. & S.? A. Yes. The signing was subsequent to the Milwaukee contract.

Q. Yes, it was the Milwaukee contract which you referred to, was it not, in the testimony of Mr. Lawrence was dated in 1966, wasn't it? A. Right.

[147] Q. (By Mr. Green) Mr. Westergard, I understand the application asks for the right to buy into Terminal Company and the use of those trackages. I believe that has been established. Does the S. P. & S. and the U. P. now have any track rights on the terminal itself? A. No, sir. We would have to have permission and we would have to apply to the Interstate Commerce Commission for such trackage rights and, in fact, if and when we acquire it we would have to apply to the Commission for such rights which we are not doing

[150] Q. I would like also to direct your attention, Mr. Westergard, to Page 12 of your testimony, the second full paragraph, beginning of the second sentence. "Both the Milwaukee and Southern Pacific can and now do share in traffic originating and terminating at Peninsula industries, and their ownership of an interest in this line will in no way benefit the public. For these reasons it is our position, that neither the Milwaukee nor the Southern Pacific should be included as owners of Peninsula or be given trackage rights to reach and/or operate on the properties of Peninsula."

In connection with your reference that ownership would in no way benefit the public, that you also stated that therefore you do not propose that trackage rights offer on the property Peninsula—do I understand correctly that you would consider it not in the interest of the public that there would be access to a Peninsula Terminal Company by more lines than present serve it? A. I am not sure what you mean by access. Do you mean more lines operated or operate on it?

[151] Q. Direct trackage. A. And more lines switch cars to industries located on Peninsula?

Q. Direct connected. A. I still don't know what you mean by direct connection.

Q. At the present time you represented the fact that only two lines presently serve the Peninsula Terminal Company? A. Yes.

Q. Do you mean to say by the paragraph I just read that you would consider it not to the public best interest that additional lines have that direct access? A. I think additional lines do have the access.

Q. How, Mr. Westergard? A. I think the cars of all lines serving Portland can reach Peninsula.

Q. In the same manner that they reach Portland?
A. Hauled by locomotives, they are the same in that respect.

Q. But single-line service? A. No, not single-line service.

[152] Q. You are also familiar with the fact that Rivergate in the North Portland Peninsula area is one of the last remaining areas for existing Portland businesses to expand into? A. Yes, sir.

[155] REDIRECT EXAMINATION

Q. (By Mr. Devers) Along this line, I think it has been made clear that Southern Pacific now shares in traffic that originates and terminates on the lines of Peninsula Terminal, right? A. Yes.

Q. Is that through its connections? A. Yes.

Q. Does Southern Pacific by the same token share this traffic that originates and terminates in South Rivergate?
A. Yes.

Q. And that's through its connections? A. Yes.

Q. And every railroad that reaches Portland can also share in this traffic, can it not, through its connection?
A. Yes.

Q. If Milwaukee is permitted to enter into Portland it also [156] will be permitted to reach both North Rivergate and South Rivergate through its connections will it not?
A. Yes.

Q. Reference has been made in cross examination to your statement on Page 10 of your testimony where you say in such event Union Pacific and S. P. & S. have already given the Port written assurance that we will provide joint similar service to that being provided now by another connection in the southwest part of Rivergate.

Mr. Devers: May I have marked for identification a letter dated January 19, 1960, from Union Pacific Railroad and Spokane, Portland and Seattle Railway too, I believe, Mr. Linstead

(Applicant's Exhibit No. 35, Witness Westergard, was marked for identification.)

Q. (By Mr. Devers). I hand you the document which has been marked for identification as Exhibit No. 35. Is that the written [157] assurance to which you have referred to in your testimony or a copy thereof? A. Yes.

Q. And again the date of that letter? A. January 19, 1960.

Q. This contract that counsel for Milwaukee has been referring to on cross examination, and particularly—strike that—which bore the date of May 26, '67, I believe, was that contract the formalization of the commitments that you gave to the port in that letter? A. In part.

[158] Q. (By Mr. Devers). Isn't that true, based on your experience as an operating railroad executive, that such a provision which precludes one party to such a contract to permit a nonparty to use those tracks without the consent of the other party is a standard provision in that kind of a track agreement? A. I would say so, and I would certainly want it in any joint agreement.

Q. Would you want it there as an operating man as well as perhaps lay counsel? A. As an operating man.

[159] RECROSS EXAMINATION

Q. (By Mr. Ploeger) The traffic that the Milwaukee will participate in to and from Rivergate today would be that traffic which was interchanged to the Great Northern-

Northern Pacific at the Twin Cities if it was transcontinental or at Chehalis if it was traffic originating in its Milwaukee local territory west of the Twin Cities, is that correct, or do you know? A. You are speaking of the traffic that the S. P. & S. would handle to Rivergate?

Q. Peninsula Terminal would handle which would be the terminal S. P. & S., Great Northern, and Northern Pacific.

A. Yes. Presently, since we do not have a direct interchange with you, why it would come that way.

[160] Q. If the Milwaukee would extend its line to Portland, where would it interchange to the S. P. & S. for delivery, and it's in Portland, for delivery to Peninsula Terminal Company, if it did not have the right to make an interchange at North Portland Junction or Barnes Yard?

A. One point would be Vancouver, which is the same point we receive the cars of Northern Pacific and Great Northern that we are going to deliver to Peninsula.

Q. If the Milwaukee were to deliver the cars to you at Vancouver, would it not be necessary to pay to the S. P. & S. or the Northern Lines a division of the free rate the same as they do at Chehalis now? A. Not if you negotiated something else, some other arrangement.

Q. We already established, Mr. Westergard, that before we can negotiate something else you have to have trackage rights to the North Portland interchange. A. Yes.

* * *

[162] Q. It's your testimony that the S. P. & S. could, under a joint facility agreement, handle traffic to Peninsula Terminal Company if the Milwaukee did not have trackage rights from the connecting track to the interchange track at Peninsula? A. I can only answer it this way. Mr. Ploeger, that if you didn't get this cars would get there, like if you had interchange anywhere in the Port-

land area with a merged company, your cars would get there under arrangements like Southern Pacific cars do.

Q. You men we deliver them to you at Portland, downtown-Portland interchange points, at Hoyt Street or some such place? A. Deliver them at East St. John's less than a mile away.

Q. Do you have trackage at East St. John's? A. Yes.

Q. Where the cars could be set out? A. Yes.

Q. You would haul them from East St. John's back up to Peninsula Terminal interchange? A. Yes, sir.

* * *

[164] Q. What I am driving at, can the S. P. & S. or the Northern Lines make delivery on the North Portland interchange tracks which are jointly owned with the Union Pacific under an operating agreement with the Milwaukee if the Milwaukee doesn't have trackage rights on those tracks? A. I would say not.

Q. I didn't hear your answer. A. I would say not.

Q. Wouldn't it be much better service, then, if Milwaukee had trackage rights to North Portland interchange, and then delivered the cars under a car puller arrangement to the Northern Line or the S. P. & S. at Vancouver for handling directly to North Portland in both directions? Wouldn't that be the most economical way and most efficient way to do it? A. The complication, as I see it, would then be in Milwaukee receiving cars back from Peninsula.

* * *

[166] Q. This is your objection to our coming into that trackage and it would seem to me you would be agreeable to that. The objection is you don't want our engines and crews in there, isn't that right? A. I guess the answer to this would be that this is something you are asking rights on trackage that we don't have the sole ownership of so—

Q. (Interrupting) That's why we are in the lawsuit.
 A. I can't answer if you are asking whether we will or we won't.

* * *

[167] REDIRECT EXAMINATION

Q. (By Mr. Devers) Mr. Westergard, I hand you the exhibit marked for identification as Exhibit 36. Will you please tell us what that is? A. This service to supplement the earlier letter of January 19.

Q. To whom is it addressed? A. This is addressed to the Port of Portland.

Q. And its date? A. The date is May 25, 1960.

Q. And it was written by whom? A. This is also a joint letter from Mr. Wengert, general manager of Union Pacific, and Mr. Albertson, vice-president of the S. P. and S.

* * *

[168] Mr. Ploeger: In these letters you referred to the Ramsey Lake development with Dow Chemical. Is the Ramsey Lake development the Rivergate Industrial District now?

The Witness: It is generally the same. Ramsey Lake is what you may call a portion of what is now the whole general area that is called Rivergate.

Mr. Ploeger: Dow Chemical did not in 1960 locate in the Rivergate area, did it?

The Witness: No.

Mr. Ploeger: Subsequent to that time new industries were located in the area they had picked out for Dow Chemical?

The Witness: No, that isn't quite the fact. The January letter was written when negotiations were being carried on between the Port and Dow, and the

Union Pacific and S. P. and S. made these commitments that they would serve Dow and the Rivergate area. Then when Dow's plans fell through as far as locating in the Rivergate area, the Port requested some further assurance that they could continue negotiating for industries in that area on this same basis that they had offered to do. The 19 January letter was what you might say too specific and [169] referred only to one instance, and that is the purpose of this letter.

Mr. Ploeger: This Exhibit 36?

The Witness: Exhibit 36, yes.

* * *

GEORGE H. BAKER

was sworn and testified as follows:

[170] DIRECT EXAMINATION

Q. (By Mr. Weisser) Will you state your name, sir?

A. George H. Baker.

Q. By whom are you employed? A. Union Pacific Railroad Company.

Q. In what capacity? A. General Manager of the Northwest District.

Q. Do you have before you a copy of what has been marked Exhibit 26 in this proceeding, your testimony?

A. That is the one of Mr. Westergard.

Q. No. 27, excuse me. A. Yes, sir.

(Exhibit 27 marked for identification.)

Q. This is your prepared statement for this proceeding, is it not? A. Yes, sir.

Q. Are the statements and facts stated therein true and correct to the best of your knowledge and belief? A. They are, sir.

* * *

CROSS EXAMINATION

[172] Q. The Portland Terminal Railroad is owned 40 per cent by Union Pacific, 40 per cent by Northern Pacific, and 20 per cent by Southern Pacific, isn't that true? A. Right.

Q. * * * Will you refer to your own testimony on Page 3. You [173] say, "If S. P. and Milwaukee or either of them are permitted to share an ownership of 3.79 miles of railroad, I believe its management would become difficult and indecisive and that service to the public could suffer." Would you tell me, sir, what you meant by "indecisive"?

A. Due to the fact that the Portland Terminal Railroad, due to its limit.

Q. Will you answer my question now? Will you tell me what you meant by "indecisive"? A. Due to the physical characteristics with the physical connection of all lines in there, it could be inadequate to provide the service that the public would require.

Q. You say that its management would be indecisive. Could you tell me what you mean by that, sir? A. Because of the complexity of it with all the lines and managements in there that in my opinion they would not—it would just be in complete harassment.

Q. You are the president of the Portland Terminal Railroad, are you not, sir? A. I am for this year, yes.

Q. Is it your testimony that by virtue of the fact that that railroad is owned by three carriers rather than two that its management is indecisive? A. I would say that we do have differences of opinions of various kinds in connection with the management of the Terminal [174] Railroad.

Q. Has that resulted in indecisive management? A. Somewhat; it has happened.

Q. Has it resulted in indecisive management, in your opinion? A. I would say to a degree.

Q. Has that resulted in bad service to the public by the Portland Terminal Railroad? A. I don't believe that it would be, the service would not be affected, physical service to its customers.

Q. But you do think that if the Peninsula Terminal is owned by three rather than two that that would result in service to the public being not as good, isn't that right? A. If three or four physical lines actually performed actual physical operations.

Q. In other words, this statement you make here assumes that both the S. P. and Milwaukee will be physically operating over the Peninsula Terminal, is that what you are saying? A. Yes, I would agree.

Q. Will you read that sentence again that I quoted to you. Doesn't that refer only to ownership? It has nothing to do with operations, does it? A. It refers to management.

Q. You told me that three railroads owning the Portland Terminal Company Railroad rather than two has not resulted in bad service to the public. Will you please tell me, sir, [175] why ownership of the Peninsula Terminal by three railroads rather than two will result in a decline of service to the public?

* * *

A. There again I have reference to the physical operation and service that is performed.

* * *

Q. Are you telling me, then, that the statement that I have read to you about management which refers only to

ownership there will be no decline in the service to the public if three or four rather than two own it? Do I correctly understand you now? A. It is my opinion that there could be, due to the fact that three or two of them can negotiate and get together where maybe four would be at odd ends.

* * *

Q. You have indicated to me, sir, that the three railroads [176] owning the Portland Terminal Railroad, of which you are president, has not resulted in bad service to the public, and all I am trying to find out is what is the difference in the situation at Peninsula Terminal which leads you to believe that if three railroads rather than two owned Peninsula Terminal the service to the public could suffer, to use your own words. A. I don't think I said that the service to the public would suffer.

Q. That is what your statement says. I am reading it, "and that service to the public could suffer". I am quoting it, sir. A. But didn't I clarify that to the degree that I had reference to the physical operation of the lines' service?

Q. All right; that is all. I wanted to make clear that we have a meeting of the minds that the fact that there are ownership by three railroads rather than two will not result in a decline of service to the public, it is only when you reach the point that the railroads are physically operating over Peninsula Terminal that that takes place, is that right? A. To a degree, with the exception that when we get into track contracts and anything with an industry going in there, I think maybe we could run into opposition as to whether there are more and better groups.

* * *

[177] Q. Mr. Baker, isn't it a fact that the only reason the Union Pacific seeks to control the Peninsula Terminal is to block the other railroads serving Portland from reaching Rivergate? A. No.

Q. If your answer is no, why do you object to the Southern Pacific having direct access to the Rivergate area? A. Because there will be congestion.

Q. This congestion is the sole reason that Union Pacific objects to Southern Pacific having direct access to Peninsula Terminal, is that correct? A. We have trouble getting to our own yard with our own physical transportation.

* * *

[178] Q. Let's go back. I asked you the question whether wasn't it a fact that the reason the Union Pacific seeks to control the Peninsula Terminal is to block the other railroads from having access to the Rivergate area. You said no, that is not the fact. A. They have access.

Q. Direct access, Mr. Baker. You know what I am referring to. Direct connection with Peninsula Terminal. Isn't that a fact? A. Physically direct.

Q. Your answer is no, that is not the motive of the Union Pacific, isn't that a fact? A. No, because they do have access to it now.

Q. If your answer is no, that is not the motive of the Union Pacific in seeking to control Peninsula Terminal, my question is, the sole reason that you do not want Southern Pacific to physically operate the Peninsula Terminal and connect with them directly is because of the congestion on the Union Pacific line between Albina and North Portland? A. Yes, sir.

Q. That is the sole reason? [179] A. Right.

* * *

[181] Q. You say a little further down on that same page that S. P. service can be continued in this same manner under applicant's control of Peninsula. Is it your view that the service that the Union Pacific has been performing for the Southern Pacific in bridging the traffic from Albina to the North Portland interchange has been adequate? A. I would say it is adequate, yes, normally, yes.

Q. What do you consider an adequate elapsed time for a movement of, what did you say, 5.2 miles from Albina to the North Portland interchange track? As an operating man, what do you consider adequate? A. If I took an engine and operated right directly with one car, for example, to the Peninsula Terminal Railroad, to the interchange track, this would make this one movement, approximately one hour.

Q. What has been the service that you have been providing to [182] the Southern Pacific for those moves? A. Well, I can't—I think on an average of maybe 30 hours at times. The same way with our own traffic.

Q. Thirty hours. What have you done about that? A. First, should we go back and take a look at maybe how this traffic, how it is handled out there?

Q. Let's talk about your own traffic. You said your own traffic had those 30 hours' delays too. What is causing that? A. From the time it arrives until it is in the yard, by the time it is serviced indirect, from the time it is switched into the transfer cut going out there, and from the time the actual physical interchange is made, and your traffic is handled right in the same manner.

Q. As an operating man, sir, do you consider that as adequate service, 30 hours from the time of arrival until it is spotted in the switching area? A. Let's put it this way, I haven't received any specific complaints.

Q. So if you haven't received any complaints and you know it is taking 30 hours, that is adequate service for the Union Pacific, is that right? A. I wouldn't say that.

Q. You haven't done anything about it, have you? A. However, we haven't received any complaints, to my knowledge.

[183] Q. The operation today, if traffic is destined to the Peninsula Terminal moving via Southern Pacific, it is given to the Union Pacific at the Albina Yards? A. Yes, sir.

Q. Physically? A. Yes.

Q. The Southern Pacific operates from East Portland to Albina Yards as your agent, does it not? A. That is right.

Q. At Albina the Union Pacific then takes that traffic and moves it to the Peninsula Terminal-North Portland interchange, is that correct? A. Yes.

Q. How is that traffic handled by the Union Pacific to Albina at the North Portland interchange? A. Normally with a Kenton engine, what we call a Kenton Yard engine, on the 11 p. m. to 7 a. m. yard engine and again on the 7 a. m. to 3 p. m. yard engine. There will be times if there is a call, it is my understanding, about any particular car that after the Kenton Yard engine gets to Penn Junction, then it will go on over to North Portland to make the interchange there with the Peninsula Railroad, return, and then grab its cars and continue on to Kenton. However, if there is no rush cars, then the movement will be from Penn Junction up to Kenton. Then when it returns after doing its work in the [184] vicinity of Kenton, then it comes down and out to the Peninsula Railroad interchange track, makes its delivery and its pickup, and then back into Albina Yard.

Q. I would like to talk a bit, Mr. Baker, about the Union Pacific trackage between your Albina Yard and the North Portland interchange with Peninsula Terminal. Will you tell me what the weight of the rail is, sir? A. That is 131-pound rail.

Q. That is main-line rail, isn't it? A. Yes.

Q. It can handle any kind of traffic, can't it? A. Yes.

Q. It is a first class railroad? A. Yes.

Q. Well ballasted? A. Yes.

Q. Ties are in good shape? [185] A. Yes, sir.

Q. How about the curvature? A. Curvature is no problem in that area.

Q. Will you describe the signalling on that line from the time you leave Albina Yard until the time you arrive at Peninsula Terminal? A. That is CTC, central line traffic control signalling, which is controlled by the train dispatcher in the Albina Yard or Albina chief dispatcher's office, with the starting signal commencing at St. John's Junction, continues on through what we call the tunnel, which is a mile long, to Peninsula Junction. There the railroad makes what we call "H" line, makes a diversion of continuing on toward either North Portland, Kenton, or Barnes. CTC terminates at the Peninsula Junction.

. . .

[187] Q. How many main tracks do you have? A. We have what we call a main track. We have, after the remodeling of the Albina Yard, what we refer to as the old main, but which is used as yard trackage.

Q. You say you are remodeling Albina Yard? A. I said when Albina Yard was remodeled here a few years back.

[188] Q. Is Albina Yard a sufficient yard, in your view? A. Yes, to the degree of what we have to work with and capacity.

Q. On traffic that moves through Albina Yard without stopping for any switching or classification, which tracks do you use to move through that yard? A. We actually don't have any traffic that will actually make a move—strike that, will you.

For example, with a forwarder train, he could be yarded at any track in Albina Yard that would accommodate him, which we classify as our longer tracks, which is sometimes set toward the middle of the yard and then continues its movement on out.

Q. How many tracks do you have in Albina Yard? A. I could be—I would rather not—I estimate around 42 to 44.

[189] Q. How long is Albina Yard from one end to the other? A. I would say approximately a mile and a half, three-quarters.

Q. Do you have a hump at Albina? A. No, sir.

[191] Q. Didn't you hear Mr. Westergard's testimony, which you told me you agreed in, that all of the trackage would be connected at Rivergate? A. In years to come, but I do believe that in some of the reports it did show that there would be a separation, a water separation, over somewhere in this general area (indicating).

Q. Then you disagree with Mr. Westergard that all of the tracks in Rivergate will be connected? A. In years to come it is our understanding they will be connected, but with the immediate future we just don't know where this is or where it is at.

[192] Q. You want to develop the Rivergate area, do you not? A. However, that has nothing to do with the Peninsula Railroad, only just in a short immediate area that I understand may develop in the near future. My understanding of the development of Rivergate will be a track that will take off of the S. P. and S. joint track along the top of the dike or levee and into the Rivergate industrial area.

Q. And if no other railroad other than the U. P. and S. P. and S. have direct access to Peninsula Terminal, they will be forever blocked from reaching the Rivergate area, will they not?

A. No, they won't, because you have rights into this general area up there now.

Q. (By Mr. Wilson) Are you telling me, Mr. Baker, that the [193] Southern Pacific can operate into the Peninsula Terminal interchange tracks today? A. You joined with us on the rates.

Q. I am asking you whether the Southern Pacific can operate in the North Portland interchange today. A. Physically?

Q. Of course, that is what I am asking. A. No.

Q. If they can't operate up there, how can they serve the Rivergate area except through the Union Pacific? A. That is the way you serve it now.

Q. Is it your belief that the development of the Rivergate area depends on adequate railroad service? A. Absolutely.

[194] Q. Is there any double track between Albina and North Portland interchange or is that all single track? A. That is single track.

Q. How about the grades, Mr. Baker? I don't think you gave me that when I asked you as to the physical characteristics of [195] line. A. Well, there is a line grade leaving the Albina Yard up into the tunnel and about in the center of the tunnel there is five-tenths extending and then crest, and then practically level, making a slight extending and upgrade into North Portland.

Q. That, of course, is not an operating obstacle in any way? A. Not to any great degree. I might clarify this. With big heavy transfer trucks trying to use it, it does present its problems, like if they are stalled in the tunnel and you lose compression because of it.

* * *

[196] Q. Let's look at Exhibit 37 for identification. Can you tell me, Mr. Baker, how many moves you make daily over the line from Barnes Yard towards Kenton that would cross the Peninsula Junction? When I say moves, I am referring to whether it be trains, cuts, switch moves, anything of that nature, any kind of a move. A. I don't believe I could actually tell you how many moves there are from Barnes Yard to Kenton.

Q. Or beyond, Kenton or beyond? A. But in that general area it is estimated 40 to 45 moves.

* * *

[197] Q. Yes. Let's talk about that, then. Let's find out how many moves there are that are involved here. How many moves do you have from Albina or south-north through the Peninsula Junction to the North Portland interchange? A. I don't have them broken down as far as that. I just took the grand total of the moves into this area. The CTC graphs ran on an average of 40 to 45 moves per day with as high as 56 moves.

[200] Q. (By Mr. Wilson) October 1 through 14, 1967, will you please read the total moves per day? A. October 1, 30; October 2, 32; October 3, 45; October 4, 54; October 5, 56; October 6, 44; October 7, 36; October 8, 28; October 9, 30; October 10, 44; October 11, 46; October 12, 43; [201] October 13, 40; October 14, 34.

Q. Will you please do the same thing for the second group of dates you took, which I think was January of this year? A. January 14, 25; January 15, 46; January 16, 43; January 17, 42; January 18, 41; January 19, 41; January 20, 30; January 21, 26; January 22, 35; January 23, 35; January 24, 44; January 25, 43; January 26, 42; January 27, 32.

Q. On the first group that you gave me they range all the way from 28 movements up to 56 in a 24-hour period, is that correct? That is what I took down. The record will show. The second group, they range all the way from 25 movements up to 46. Does that indicate to you, Mr. Baker, that there is room on this track for additional traffic when you have such fluctuations? Isn't that a fact? A. Not necessarily.

Q. Are you telling me it is just as congested on a day when you have 25 moves as on a day when you have 56?

A. Of course, anyone knows that if you have 56 it is going to be more congested than on the day you have 28.

Q. Yes. How many movements did you visualize the Southern Pacific was going to make over that line if they were successful in this proceeding on a daily basis? A. I wouldn't have any way of knowing just what they did have in mind.

Q. In preparing your testimony, where you talk about the fact [202] you can't have them on because of this congestion, what did you have in mind when you wrote that?

A. The line is heavily congested now handling our own traffic.

Q. Did you have in mind when you wrote your testimony that the Southern Pacific move would be a movement that would move straight through the Peninsula Junction in both directions? A. I don't know what they have in mind. Nobody has given me any indication what they have in mind, whether they want to come over with their own transfers, come to Albina Yard and continue on, or whether this was going to represent transfers to and from.

* * *

[204] Q. (By Mr. Wilson) Look again at Page 20 of the application. I am referring now to the last paragraph. You say, "Within the foreseeable future substantial new traffic and revenues will be derived as a result of the development of the said Rivergate industrial area by the Port of Portland Commission." What are the Union Pacific's projections of this future new traffic that you have referred to in your application? A. I myself have not been apprised of any mammoth development of the Rivergate industrial area off of the Peninsula Terminal.

Q. Would you disagree with this statement? A. No. We do anticipate, just like any other development of any area, that it is going to grow just like it continues to grow with Portland.

Q. So you agree that there will be substantial new traffic from the Rivergate industrial area, is that right? A. There should be.

Q. Did I understand your previous answer to indicate that when Union Pacific used the words "Rivergate industrial area" in their application they were referring only to that area that was immediately adjacent to Peninsula Terminal? A. They could be, or it could have been, too, with the anticipation, maybe, with the assistance of the Port the continued development of the Peninsula Railroad in some manner beyond the Port of Portland's property line.

* * *

[207] Q. (By Mr. Wilson) * * * If there were other railroads connecting with the Peninsula Terminal directly besides the S. P. and S. and U. P., would it be adverse to the public interest to not allow them to be equal owners of Peninsula Terminal? A. Would not be adverse?

Q. Would it be adverse to the public interest to not allow them to be equal owners of Peninsula Terminal? A. No, if they had a track and rights in there, unless they decided they didn't want to be a party.

Q. If a railroad did connect directly with Peninsula Terminal and they were not or did not become an equal owner, they would have no voice at all in what Peninsula Terminal did as far as developing any portion of Peninsula Terminal or beyond, would they? A. That is something I couldn't answer.

Q. Don't you certainly expect that if you are successful in your application here that the S. P. and S. and Union Pacific [208] are going to run and control what the Peninsula Terminal does? A. Well, I think this, that as far as operation is, sure, it would be to the benefit of the public right there at the Peninsula in connection with what the Peninsula Railroad does.

Q. If the record should show that the public desires that all railroads serving Portland reach the Peninsula Railroad, would you, under what you have just told me, for the benefit of the public be willing to give access to other railroads to reach Peninsula Terminal? A. No.

Q. Why not? Because you might lose traffic? A. No, because it would jeopardize traffic to be delivered, it would jeopardize the public because of the congestion that it could cause out there.

Q. Out where? A. At Peninsula Junction.

Q. You can go down through Barnes Yard if you wanted to reach Rivergate. A. Barnes Yard won't be the only place here.

Q. It would be an access to Rivergate, would it not?

A. Counsel, you misunderstand me. Are we talking about the Peninsula Railroad over here (indicating)?

Q. Yes, access to the Rivergate area. If you will agree with me that it is the position of the Union Pacific that Peninsula Terminal Railroad is not access to the Rivergate area, we [209] might be able to just terminate this pretty quickly. A. We don't know what is going to develop, as far as that goes, from the Peninsula Terminal. We do not know what is going to develop from the Peninsula.

. . .

[211] Mr. Wilson

GEORGE H. BAKER

resumed his testimony as follows:

CROSS EXAMINATION (Continued)

Q. (By Mr. Wilson) Mr. Baker, am I correct that if you had a clear track under the CTC between Albina and the North Portland interchange that it would take about 30 minutes to make that move? A. From the extreme north end of Albina Yard to the North Portland Peninsula Junction.

Q. Not Peninsula Junction North Portland Interchange with Peninsula Terminal? A. Yes.

Q. Assuming the track is clear and you have no opposing moves, and the CTC is operating, and just moves right on through, would it take about 30 minutes? A. Well, if you had the sufficient power and the train wasn't too long, taking those all into consideration, we estimate right around 45 minutes with just an ordinary engine movement and maybe three, four cars.

Q. I think you told me that is a little over five miles.

A. Five and two tenths.

Q. Have you made any study to determine how many times during any 24-hour period that track is open without any obstructions on it by other track for^a thirty to forty minute period? [212] A. Yes, there has been a study made.

Q. Can you tell me what that study shows as to how many periods in the 24-hour period you might find that track is free and clear? A. In excess of 30 minutes?

Q. In excess of 30 minutes. A. That was in the same study that was made in October and January of this year?

Q. Yes. A. Do you want me to read them by days?

Q. If you will just give me the ones that are 30 or more first maybe we could shorten it down first, 30 minutes or more the track was free and unobstructed. A. For example, on January 26 there was seven times.

Q. Seven times, all right. Can you just do that for each date, sir? A. We can start down here at January 14, 11 times; January 15, 7 times; January 16, 7 times; January 17, 8 times; January 18, 8 times; January 19, 9 times; January 20, 9 times; January 21, which was a Sunday 11 times; January 22, Monday, 7 times; January 23, Tuesday, 6 times; January 24, 10 times; January 25, 6 times; January 26, 7 times; January 27, 8 times.

Q. Would you mind doing the same thing for the other two-week period that you studied? A. October 1 to October 14, '67; October 1, Sunday, 9 times; [213] October 2, 9 times; October 3, 11 times; October 4, 5 times; October 5, 6 times; October 6, 7 times; October 7, 9 times; October 8, which was a Sunday, 9 times; October 9, 8 times; October 10, 5 times; October 11, 4 times; October 12, 4 times; October 13, 6 times; October 14, 5 times.

CROSS EXAMINATION

Q. (By Mr. Merrill) Mr. Baker, my name is Merrill and I represent the Milwaukee Railroad.

My understanding of your testimony this morning was ~~that you do not oppose access by other railroads to North Portland Interchange because of the fear of diversion of traffic by those railroads by the Union Pacific~~, is that correct, sir? A. Did I say diversion of traffic?

Q. Loss of traffic. A. I thought, it was my understanding that I did not object as long as the S.P. and S. is a switching agent for them or Union Pacific switches also in conjunction with the switching agent with the Southern Pacific handle the traffic to and from. What I am trying to say is to get away from the heavy congestion of train and engine movement on this single line or at Peninsula Junction.

Q. Which single line are you referring to, Mr. Baker? A. Either on our line getting out, well, it would be this [214] line here (indicating).

Q. You are referring to the Union Pacific line from Albina Yard up to the North Portland Interchange, is that right, sir? A. Yes.

Q. If there were no congestion on that track you would have no objection to granting access to the North Portland Interchange to other railroads, is that right, sir? A. I couldn't quite state that I would have no objection until after I knew what stipulations they were going to come under.

Q. Your objection up to here is the problem of congestion on the Union Pacific? A. Right.

Q. Under the proposed access by the Milwaukee Road to the North Portland Interchange there would be no congestion of the U.P. at Peninsula Junction, is that right, sir? A. There too again, I don't know how, if the merger

were granted just what stipulation the Milwaukee would be coming in there on. You answer me this, would the Milwaukee come up here if they was granted coming across the bridge, would they stop out here and physically set up cars there?

Exam. Shoup: The record isn't clear as to your directions on the map before you, sir.

Mr. Weisser: Could you explain what you meant, Mr. Baker, when you pointed to the Exhibit 4 to the application?

The Witness: If the Milwaukee were allowed to enter Port- [215] land, would this be their route from Vancouver across the Columbia River and Oregon Slough, and on the S.P.&S. mainline, and then make a physical set out down on these tracks, or would S.P.&S. do it?

Mr. Weisser: When you say "these tracks", do you mean the North Portland Interchange Yard?

The Witness: Yes, the North Portland Interchange Yard.

Q. (By Mr. Merrill) Let us work on two assumptions. Mr. Baker, let us assume first, the Milwaukee will make on the S.P.&S. and at this time set out and pick up, would this in any way cause congestion at the Union Pacific line at Peninsula Junction? A. It could very much so while they were occupying the crossovers and the trackage to get in there which would hinder movements from Union Pacific onto the northern routes towards Vancouver.

Q. How many trains a day do you have going from Albina up to Vancouver? A. We have, it would be five, possibly six that would be headed on a northern movement, the same way on a southern movement. Coming from there that would be blocked entering the Union Pacific main track at the point here (indicating) where it divides

off the S.P.&S. main track here, if there were trains standing here blocking or the train was occupying the crossover.

Q. If the Milwaukee were to stop south of the turn off of the [216] Union Pacific trains that would then cause you no problem, would it? A. If we had access and cleared the interblocking plants from North Portland Junction onto the S.P.&S. main track where we operate our trains over going northbound:

Q. By simply looking at the Milwaukee schedule, it is operating down there at different times than the Union Pacific is operating its trains, there would be no problem for the Union Pacific, would there? A. They could probably work it in there on time schedules.

Q. As an alternative move, if we had the S.P.&S. handle our cars from Vancouver the same as they handle the Great Northern and Northern Pacific, that would offer no problem at all to the Union Pacific, isn't that true? A. Well, there we go again. Until I know what they are going to do, if they are going to be using the joint tracks of which the Union Pacific has its rights in connection with the S.P.&S. and under what agreements they are going to use these under before I could give you a definite answer.

Q. Does the present operation of S.P.&S. handling their cars, the Great Northern cars, and the Northern Pacific cars cause the Union Pacific any great headaches in their operations? A. Sometimes we both have them.

Q. Sometimes? A. You bet we do have congestion over here.

[217] Q. This is a natural operating condition? A. Right.

Q. If you put two or three cars of the Milwaukee this would cut the cars from Vancouver in a S.P.&S. train which comes down this interchange at North Portland that would

make no difference that I can see, and I ask you if you can see whether it would make any difference to the Union Pacific. A. On the physical movement, no.

Q. I see. As a matter of fact, isn't your objection to the Milwaukee gaining access to North Portland Terminal Interchange part of an overall effort on the part of the Union Pacific to stop the Milwaukee from reaching Portland and to offer a competitive service, on-line service to any Portland industry, isn't that true, sir? A. We do join with U.N. through rates I believe at Chehalis and Marengo, probably Tacoma.

Mr. Merrill: Mr. Examiner, may I have the question read back to the witness and request an answer.
(Question read.)

A. I would say yes.

• • •

[225] Q. You refer on page 3 of your statement, sir, to unnecessary duplication of service personnel, facilities, and equipment, at the end of the first paragraph on that page. Should the Milwaukee have access to North Portland Interchange and deliver cars there, what duplication of equipment would be required in making an interchange with either the Union Pacific [226] The Southern Pacific, the S. P. & S., or the Peninsula Terminal at that location? A. Peninsula Railroad doing the work that additional cars or equipment would be necessary.

Q. With the Milwaukee making a direct interchange at that point what additional equipment would be necessary, sir? A. Would you clarify the word equipment? What are we talking in line of equipment? Are you talking about rolling stock?

Q. I tried to stay with your terminology, Mr. Baker, and the comments as you set it forth on page 3 of Exhibit 27 are as follows: "Our joint ownership of Peninsula Ter-

minal likewise assure acceptable terminal service to industries located in those parts of Rivergate Industrial District which are or could be served from existing Peninsula trackage without unnecessary duplication of service, personnel facilities, or equipment." When you speak of duplication of service, personnel facilities, or equipment you are thinking in terms of more than one railroad operating over the Peninsula Terminal trackage to reach these industries, is that correct, sir? A. That is right; as well as using those interchange tracks.

Q. We can divide these into two parts, first of all if more than one railroad operates over the Peninsula Terminal to serve these industries this would require duplication of service equipment, personnel, and facilities, is that right, sir?

Mr. Weisser: Mr. Examiner, I think that that question was [227] premised on something that is outside the application in these proceedings except possibly the application of S. P. under their first finance docket. As I read the application none of the carriers except S. P. wanted any users rights over Peninsula Terminal.

Mr. Merrill: If counsel is willing to stipulate Milwaukee's application will not require unnecessary personnel or equipment, I have no further interest in asking any questions of this witness.

Exam. Shoup: The objection is overruled.

Mr. Merrill: Would the counsel be willing to stipulate?

Mr. Weisser: I will not stipulate.

Q. (By Mr. Merrill) All right, Mr. Witness, proceed.

A. In regard to interchange track you will actually be making the physical switch yourself out there. We feel you will have to have more interchange track.

Q. What would it consist of, one additional track of the Milwaukee to receive cars? A. As well as maybe additional track to set out cars on.

Q. You already have a track on which you receive cars at North Portland? A. Right.

Q. And the S. P. & S. has track? A. Right.

Q. And the Peninsula Terminal has a track? [228] A. Right.

Q. You have a track you keep open to run back and forth on? A. Yes.

Q. If the Milwaukee came in, is there room to put another track for the Milwaukee? A. I can't say.

Q. Haven't you ever looked at it, Mr. Baker? A. Yes.

Q. Isn't there a lot of room out there? A. What length of track and stuff, but I would want to consult an engineer on it.

Q. As far as you know there would be no problem. A. What do you mean?

Q. Of putting another track. A. I couldn't answer you that truthfully until I had an engineer with me to look it over.

Q. So as to what additional facilities would be required if the Milwaukee operated in there you could not say.

[229] Q. (By Mr. Merrill) Are there any other facilities you know of that would be required? A. Might have to be some other changes down in the Peninsula Junction, or that is the Peninsula Railroad itself. There is some sharp curvature, what type of equipment you try to place in there I couldn't say until I knew what the problem was going to be at the time.

Q. Let us assume, as your counsel pointed out, that the application of the Milwaukee does not contemplate physical operation on the Peninsula Terminal Railroad by the Mil-

waukee, if that is true then your last answer would not be responsive, would it?

Mr. Weisser: There is equipment other than locomotives, Mr. Merrill.

Mr. Merrill: I would be happy to hear what new facilities other than possibly additional track if the Milwaukee were permitted to reach the interchange at North Portland but not to operate over the track of Peninsula Terminal to reach the industries.

Q. (By Mr. Merrill) Do you know of any other facilities re- [230] quired except one additional track? A. I don't know if one would do it or two. That is something else. In regard to maybe having interchange clerks it all depends on what type of work you want. What is going to be performed out there. If these clerks required additional buildings.

Q. Mr. Baker, have you made any investigation or study to determine this? A. Other than we know of that, more lines come in that we know that it will probably require additional facilities or additional trackage.

Q. Are you in a position to state what additional facilities or what additional trackage would be necessary? A. Not to actually pinpoint it down, no.

Q. This is something you haven't given any detailed consideration? A. We know generally, not it exact, how many feet of space or this or that.

Q. If the Milwaukee is agreeable to bearing the additional expense of building a track in there, if a track is necessary, or to bear the expense for any additional employees, or any facilities this would be no harm or disadvantage then to the Union Pacific, would it? A. If the Milwaukee were allowed into, if that was stipulated in the merger agreement.

[231] Q. Then there would be no injury to the Union Pacific, is that right, sir? A. I think that would be injury to the Union Pacific, yes.

Q. There would be no expense to the Union Pacific if the Milwaukee bore it own expense. A. You are talking just about the physical building of trackage, stuff like that, no, if you bear all expenses.

Q. As a matter of fact, if the Milwaukee bore a portion of expense or whatever the joint expenses are at that point it would possible reduce the Union Pacific expenses, would it not? A. Just in regards to the physical outlay.

Q. Yes.

Now, sir, is there any point in Portland where the Union Pacific and the Milwaukee could make a direct interchange if the Milwaukee service is extended to the city of Portland, of which you have any knowledge, without the use of any intermediate carrier or switching line?

You are aware, sir, before you answer the question, and this may be helpful to you, that under the agreement between the Milwaukee and the Northern line that if the Northern line merger is approved the Milwaukee would have the right to operate from the Longview Junction to Portland as far as the Hoyt Street Yard of the S. P. & S. Railroad, and with that explanation do you know of any point in Portland where the Union Pacific and Milwaukee if the operate to Portland could [232] have a direct interchange between the two railroads?

* * *

A. I can't think of any right now.

Q. (By Mr. Merrill) You have designated North Portland as an interchange point at which you will receive cars from the S. P. & S., and the N. P., and the G. N., have you not, sir? A. Yes.

Q. If the Milwaukee were to operate and have access to this interchange then you could also interchange cars at that point directly with the Milwaukee, could you not, sir, at North Portland? A. I don't think we could.

Q. Tell me why, sir. A. I don't think there might not be enough room until we look in there.

. . .

Q. (By Mr. Merrill) Based on your knowledge, Mr. Baker, you can't say whether there would be any problem at all in that connection, is that right, sir? A. Whether there would be?

[233] Q. Yes. A. I am sure there would be out there.

Q. A problem of room? A. A problem of room in Portland Junction.

Q. And this contemplates how far that the Milwaukee will provide additional track for interchange and assuming the Milwaukee does so, now, could this not be then designated as an interchange point between the Milwaukee and the Union Pacific?

. . .

[235] Q. (By Mr. Merrill) Mr. Baker, at the North Portland Interchange you do have a track on which you receive cars from the S. P. & S., N. P., and G. N.? [236] A. Yes, from the S. P. & S., yes.

Q. Would the Union Pacific have any objection if the Milwaukee had access from the North Portland Interchange to receive cars from the Milwaukee at that time?

. . .

A. I am going to have to answer it in this matter. I would have to take a good long look at it to see what the conditions were and just what it all involved.

Q. (By Mr. Merrill) That is fair enough.

. . .

[240] REDIRECT EXAMINATION

Q. (By Mr. Weisser) You have had cross examination by virtually every counsel here on the sentence on top of page 3 concerning difficulty and indecisive management. Will you give an example of L. P. & N. and the Portland Terminal Railroad, have you got any specifics in those companies other than what you have given I think on the O. P. & N. you have given an example of switching agreements taking better than two years to become consummated. Have there been any other agreements for track building or anything of that nature? A. Like a track agreement right now up there at the L. P. & N. they want to build some additional track and we are agreeable, but there are some of the other lines not agreeable.

Q. Why is this, do they each have their own standard or something they want to impose? A. Just the idea of trying to get together and getting this consummated is all. What reasons they give can be various of their own, because they say for one company, it is I have a common set of standards I have to do this, I have to go to here, and I have to talk to so and so about this, and it is just the way it keeps going.

Q. How big a job was this track agreement, do you recall? A. Not other than it is just continuing back and forth.

[241] Q. Do you know how much track was involved in being built or how much the expense was? A. No, I don't right off hand.

Q. The switching agreement, did that have to do with the rates that had to be paid by the operating company?

A. To the L. P. & N., it took over four years for the four owners to decide what to agree to, and it hasn't been completed yet.

Q. What about any difficulties on the Portland Terminal Company other than signing leases and trackage agreements, is there any general reluctance on the part of three lines to agree if the companies they represent don't benefit from the proposal? A. Yes, we have, we are all, can't get together on trackage agreements, just I think Mr. Westergard has one up there with us now in connection with an interchange track. I don't think that has ever been consummated, and that has been in a couple of years.

Q. That is the Portland Terminal Company agreements with the S. P. & S., is that what you are talking about, Portland Terminal agreements with the S. P. & S.? A. Yes.

Q. This is what you foresee might happen on the small railroad Peninsula Terminal Company if more than two were allowed to participate? [242] A. That is right.

[243] Q. (By Mr. Weisser) Also in your questions of Mr. Wilson you talked of delays in movements between Albina and North Portland, [244] could you describe in your own words just what takes place between the time a Southern Pacific transfer train arrives at Albina and the track therein is ready to be taken out to North Portland, and how the movement is made from Albina to North Portland? A. Well, a S. P. transfer could arrive from the Brooklyn Yard to Albina Yard be yarded into a special track.

Q. What do you mean by yarded? A. Put right into yard. There is two running rails between East Portland and entrance to Albina Yard, and be yarded into Albina Yard on the special track, say, the transfer consisted of 80 cars, let us say there was in this equipment there is cars from the S. P. going maybe on north maybe going to Longview Junction, maybe going to Seattle, maybe other cars going East to The Dalles the other cars maybe in there.

going out to other points Terminal Four, Swan Island, or could be going to—then maybe there is some cars, these are all mixed up, might be two or three cars going to Peninsula Railroad.

Q. Let us take a typical car transfer train, and what is the next process for Union Pacific to do in the handling of those cars? A. You make an inbound inspection, car inspection.

Q. Is this required by law? A. Yes, required by I.C.C.

Q. What is involved in that? [245] A. Car Inspectors check the car over making mechanical inspections as well as safety inspections.

Q. Do they determine then if the cars are safe enough to go on to the next point, is that it? A. That is right.

Q. What if they determine that some cars are out of repairs, what happens? A. Then the car inspector will put what we call a bad tag or defective tag on the car then go to the repair track for repairs.

Q. Then what is this once this inspection is made, what is the next process? A. After the inspection is made we go to switching the cars out. This particular car going out to Peninsula Junction, this car it would be probably classified to a track if it is being made up where we make up the Kenton Yard track for.

Q. When you put it into a specific track do you accumulate other cars along with it then? A. Yes.

Q. Then is there any more switching involved other than setting it into a specific track? A. We go in there and it might turn out you might have to rehandle it again to put it on the headend of your edge, particularly how the yard master and engine foremen line up with connection with his work. If it is a rush car going to Pen- [246] insula Junction it could be put on the headend, where they could go out there and set their cut cars out and take this on over or if it is not a rush car probably could go up to Kenton and be rehandled back into Peninsula Junction.

Q. Peninsula Terminal you mean? A. Or Peninsula Terminal.

Q. Is any of the track come over a S. P. transfer train presently blocked for Union Pacific? A. No.

Q. So you might have a car at one end of transfer train headed for Peninsula Terminal and another car headed for Terminal train or middle some place and you would have to sort those out? A. That is right.

Q. Then as this is occurring is there any paper work going on in the processing of cars? A. Yes, in the yard office, making lists, cutting IBM card and with the list.

Q. Does Union Pacific, or do you know if it is a matter of railroad practice generally to just take one or two cars out to specific points every time you have those one or two cars available? A. Not unless they request a specific switch or some special movements on them.

Q. Otherwise how are the cars handled? [247] A. Just the normal manner.

Q. Does that mean they are cumulated? A. In other words, if you have let us say 330 Kenton engine has departed so you would start cumulating these cars on their track for 11 p. m. Kenton engine. After 11 p. m. Kenton engine departs or any outlying district then you cumulate this traffic for following transfer.

Q. Is this about what happens prior to the engine being ready to leave Albina northward you move to Peninsula Terminal Company, would there be any other things that require handling or movements by Union Pacific before the train would be ready to leave? A. I don't quite follow your line.

Q. I don't know of any others myself, but would you have to, well, here is one, would you have to check the air in the lines before the train moved? A. Yes, ordinarily after the yard engine comes into this transfer cut then he has to make an air test, what we call a terminal air test

by these yard men. That is your yard men car inspectors.

Q. Then, after this is accomplished is the car or the train ready to move? A. Yes.

Q. The train is moved then on a set schedule, is that it? Are there two train services a day out to North Portland? [248] A. That is what we generally have been doing.

Q. This is covered I believe in Mr. Westergard's testimony, was it not, the times? A. Yes.

Q. As the train is being handled are there other trains being handled in Albina at this time? A. Yes.

Q. About how many do you know at the time would be going through this process you just indicated? A. That could be varied at different times of the day. It could be run into just a heavy number of movements.

Q. Is the switching operation going on at Albina around the clock? A. Twenty-four hour basis. Some hours are much more congested than other hours.

Q. How many transfer trains a day do you receive from Southern Pacific? A. It varies, I think it averages right around 4, I think.

Q. About how many cars would be in each train? A. I am going to say on an average of maybe eighty to one hundred. I could be mistaken.

Q. Would the Southern Pacific pick up the transfers designated for Brooklyn? A. Yes. We accumulate the cars going back to the S. P. and when they come over or sometimes they will run a light engine [249] over to pick up this transfer and take it back. Other times as a transfer they run over they will try to get an engine and put it on there and then take it back.

• • •

Q. What route would an engine that is handling cars destined for North Portland take when it is leaving Albina? A. Going to North Portland?

Q. North Portland, yes. A. It would go out—

Exam. Shoup (interrupting): Counsel hasn't that already been covered by the witness?

Mr. Wilson: I thought he answered me, Mr. Examiner. I certainly thought he gave me the complete description:

Exam. Shoup: I think the route has already been covered in testimony, counsel, to great detail.

Q. (By Mr. Weisser) Are you satisfied that in your previous testimony you covered it? A. Yes, I believe I did.

Q. What about the return move from North Portland, is that [250] also back through Kenton before it comes to Albina, or does that vary? A. It could be, maybe the yard master might decide the engine from Barnes make this termination. It could be flexible out there, all depending, but ordinarily it is a Kenton engine handles that work there.

Q. Are there engines that are being prepared and sent out through the north end of Albina in this manner all times of the day? A. Oh, yes.

Q. In response to Mr. Wilson also you indicated that it was possible to designate a track from the south end of Albina through the north end of Albina and clear it so a movement could be made clear through the yard. Now, what effect would that have on other operations in the Albina Yard if such track were cleared and the through train movement were to take place? A. You would probably have to clear a track.

Q. What effect would that have on your other operations? A. It would just cause that much more congestion in your yards because you are opening up operating track you need which you should have your lead engines switching equipment do.

Your engines would just have to pull off the track and stand there until the track was cleared again. Not necessary pull off and stand there, but you are going to take away that much yard operating room from your yard.

[251] Q. That would be the same on a train movement coming from the north or south through Albina on down?

A. That is right, and if it bisected your leads or anything like that you have engines standing still.

Q. This would then interrupt the yard functions and the outbound trains, and inbound trains into Albina? A. That is right.

. . .

[254] RECROSS EXAMINATION

Q. (By Mr. Wilson) Did I properly understand your redirect, Mr. Baker, that the Union Pacific does not have a running track in the Albina Yard but that all tracks are used for yard classification movements? A. Yes. We call the running tracks running tracks No. 1 and running tracks No. 2 between East Portland and, you might say, Randolph Street or the extreme south entrance of Albina Yard.

Q. Now let's talk about Albina Yard itself from South Albina Yard to the end of the yard at the north. Let me ask this question first, do I properly understand that the Union Pacific does not have a running track from the south of Albina Yard to the north of Albina Yard but uses all tracks for yard classification movements? A. Let's put it this way. We will use the entire yard for yard train and engine movements.

Q. But you do keep a running track open, one track or two tracks, somewhere through the entire yard, do you not, at any one time? [255] A. Let me put it this way, we try to but sometimes with heavy congestion periods we are not able to.

Q. And that would probably, that track that is open would be the track that when the Southern Pacific comes up from Portland Yard and leaves the cars in Albina, the locomotive would go on up north and then come back south through that running track and on back to Brooklyn, isn't that true? A. Yes, if the track is open or a specified track.

Q. Actually your performance in providing an open track for the Southern Pacific has been very good for those engines coming up with the cuts to the Union Pacific at Albina, isn't that true? A. I don't think so, because we pay for that time the engine leaves East Portland tower until it returns back by East Portland going to Brooklyn Yard, and sometimes those expenses run pretty high all the time it is at Albina Yard.

Q. Is it your testimony, then, that the reason that that time is excessive in your view is because you do not have a running track open for that locomotive to return to Brooklyn? A. At that particular time, yes.

Q. At what particular time? A. Whatever this time might build up.

Q. Well, there are four different cuts over there every day, aren't there? A. Four to five.

[256] Q. Is it your testimony that there is no running track at any of those times for return of that locomotive?

A. No, I can't say that. There will be times, Mr. Wilson, when this will build up due to the fact of congestion.

Q. In other words, it is unusual when that happens?

A. Well, maybe in the fall of the year it would be very unusual that it would happen. It varies different times of the year.

. . .

[260] Q. Now, I am asking you, sir, if the Southern Pacific, assuming that the Commission were to grant its application, moves with Peninsula Terminal cars from East

Portland directly through the Albina Yard and north to the Peninsula Terminal interchange at North Portland, can you give me any operating reason why that is not feasible? A. Let me put it this way. I couldn't as of right now, however, I would want to reserve a direct answer until, if, and when this should ever come about that we would get a ruling from the I. C. C. on mechanical specifications.

Q. Well, I am afraid, I am afraid I can't wait, because I have to have an answer now, Mr. Baker. This is the record that the Commission is going to look to. A. I couldn't give you an answer there now because I wouldn't know.

[264] RE-CROSS EXAMINATION

Q. (By Mr. Crabtree) I just wanted to clarify one matter on the record. Can the Union Pacific get from its switching yard at Albina to Peninsula Terminal Company on its own [265] track without going out on the main track of the S. P. and S.? A. Yes, it is a joint track from the connection off our line to, with the S. P. and S. ownership in that.

Q. So in order to get from Albina Yard to Peninsula Terminal Company you don't need to occupy at any time the main line that comes across the Columbia River and goes on down to the S. P. and S.'s yard? A. Not getting to Peninsula Terminal Railroad, no.

JACK M. SANDELL

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Young) Would you please state your full name? [266] A. Jack M. Sandell.

Q. What is your business address? A. 714 West Olympic, Los Angeles.

Q. Who is your employer? A. Collier Carbon and Chemical Corporation.

Q. In what capacity do you serve that company? A. Supervisor of traffic.

Q. Is Collier Carbon and Chemical Corporation affiliated with another company? A. We are a wholly owned subsidiary of Union Oil.

Q. Does your company have a plant located in the Portland area? A. We are currently building a facility in the Portland area.

Q. Where is that? A. Rivergate.

Q. How many acres do you have in the Rivergate area? A. Twenty-five acres.

Q. What will be the approximate cost of your plant, Mr. Sandell? A. Approximately \$2,000,000.

Q. When is your plant scheduled for completion? A. In the fall of 1968.

Q. Why did your company select Rivergate as a location? A. Well, we are going to receive material by barge and vessel at that—we have an operation where we are going to bring [267] material in by barge or vessel and reship it by rail and truck and also vessel and Rivergate looked like a very attractive place to us because all these facilities were available.

. . .

Q. Are you generally familiar with the Southern Pacific Company application in this proceeding? A. Yes, I am.

Q. Do you favor the S. P. direct connection at Rivergate? A. Yes, I do.

Q. Would you explain, please? A. Well, we have several plants in the United States and from our experience we feel direct connections with the rail- [268] roads that we are going to be doing business with are more satisfactory, give possibly better service from a transit time and from a car availability standpoint, from a rate standpoint, and so based on these experiences we feel we would like to be directly served by the Southern Pacific.

. . .

Q. Will this Portland plant become your northwest distribution center west of the Cascade range? A. Yes, west of the Cascades.

Q. Will you be shipping in a southerly direction? A. Yes. We will service all of the western portion of Oregon and—yes, out of Rivergate.

. . .

CROSS EXAMINATION

Q. (By Mr. Weisser) Where in Rivergate is your plant being built, Mr. Sandell? A. On the Willamette near the confluence with the Columbia, [269] which is on the east side of the Willamette.

Q. And are you being served by rail now or will a spur be built? A. There are no tracks into our plant at this time.

Q. Are some contemplated, do you know? A. Yes.

Q. Which way will the service come from, the south end of Rivergate or the north end? A. I am not certain.

Q. Well, have you made any efforts or any negotiations or moves to obtain rail service at your plantsite? A. Well, we are aware of the fact that the plant will be served, be rail served both by the Union Pacific and the S. P. and S.

Q. How far is your plant physically from Peninsula Terminal Company, do you know? A. I don't know.

Q. Do you know where Peninsula Terminal Company is located in Rivergate? A. Not exactly, no.

Q. In relation to your plant, is it to the north and to the east? A. I don't know.

Q. Where is your plant in relation to Ashgrove Lime Company in Rivergate? [270] A. I believe it is immediately north towards the Columbia.

Q. Was your plant located in its present position through efforts of S. P. and S. Railway, do you know? A. Yes, we have received assistance from the S. P. and S.

Q. From the Union Pacific? A. Probably.

Q. From the Southern Pacific? A. Probably.

Q. Do you know, on those two probabilities, do you know? A. Yes, we have received assistance from all those railroads in locating plantsites for this particular project.

Q. But it was S. P. and S. that did locate you there, is that right? A. I am not positive. I know that they gave us a great deal of assistance.

Q. How many miles, sir—I don't know if you have already answered this—how many miles is Peninsula Terminal from your plant, do you know? A. I don't know.

Q. How is Southern Pacific proposing to serve your plant if you don't know where Peninsula Terminal is? A. Well, it is my general opinion that the Southern Pacific wants to serve our plant and other sites in the Rivergate industrial complex. How, specifically, they intend to accomplish this I don't know. I know we are definitely in [271] favor of them doing it.

Q. By a direct connection with S. P. power, coming to your plantsite or— A. Pardon.

Q. By a direct connection with Southern Pacific power coming to your plantsite or by having the Union Pacific act as a switching carrier? A. It doesn't necessarily make any difference. In other words, whether it is S. P. direct or whether it is through some terminal company or a belt line or something of that nature.

[274]

ROBERT A LAWRENCE

was sworn and testified as follows:

DIRECT EXAMINATION

[275] Q. (By Mr. Devers) Will you give us your full name, please? A. My name is Robert A. Lawrence.

Q. And your business address? A. 1101 American Bank Building.

Q. And your occupation? A. I am traffic manager, Spokane, Portland and Seattle Railway.

Q. How long have you held that position? A. Since August 1962.

Q. Have you prepared a written statement for the purpose of this hearing? A. Yes, sir.

Q. Is the statement which has been marked for identification as Exhibit 28 your statement? A. Yes, sir.

Q. Is the information set forth in that exhibit true and correct to the best of your information and belief? A. Yes, sir.

Mr. Devers: I tender the witness for cross examination.

CROSS EXAMINATION

Q. (By Mr. Wilson) My name is Wilson with Southern Pacific. Exhibit 26 for identification, Page 4, the last sentence of the incomplete paragraph at the top, Southern Pacific now serves Peninsula industries through its connecting lines and service through direct access is not required in order to [276] afford the public adequate service. Will you please state the basis for that statement?

A. If the Southern Pacific served the Peninsula Terminal direct through the North Portland interchange it would cause congestion, delays and increase switching costs, and due to the amount of traffic that is now moving through

that interchange, which I think, which I know amounts to 744 cars in 1966 off the Southern Pacific and 490 in 1967, I think that the railroads involved which is only one or two cars, a day can be handled adequately for you.

Q. Were you in the hearing room when Mr. Baker testified today? A. Yes, sir.

Q. Is it your belief that 30 hours or more to move from Albina to the North Portland interchange is adequate service to the public? A. I think any railroad man would like to improve it.

Q. Will you answer my question, do you believe that is adequate service to the public? A. No, sir.

Q. Now, if you will turn to Page 5, please, of your Exhibit 28 for identification, where you refer to the decreases in livestock receipts there about at the end of the first full paragraph. A. I talk about livestock on Page 4.

[277] Q. Well, I am referring to it on Page 5. It is where you say 3,000 cars, do you see that statement? A. Oh, I see, yes, sir.

Q. Can you tell me what projection you as traffic manager for S. P. and S. has made for traffic through the Peninsula Terminal when the Rivergate project is open?

A. Well, it is going to be open over a period of years. They have talked about locating grain elevators and other things out in that area. I can't advise you just what they are going to be successful in locating in the area. I hope, I have worked with them on industrial development, and I hope that they will be successful and I think they will have a number of plants. Whether it will meet up to the D. M. J. M. reports I am unable to state.

Q. In other words, you have made no projection of your own— A. (Interrupting) It is a—

Q. (Interrupting) Let me finish, if you will. You have made no projection of your own upon which you based the

decision to purchase a half interest in Peninsula Terminal, is that correct? A. I was asked for a recommendation.

Q. What was that recommendation, sir? A. The same as the management.

Q. To go ahead? A. Yes, sir.

[278] Q. And in making that recommendation did you or were you influenced by the fact that the Peninsula Terminal Railroad serves and has direct access to the Rivergate area? A. I was aware it could serve it but I don't believe I was influenced by that.

Q. In other words, your recommendation to go ahead and purchase the Peninsula Terminal was based solely on the industry that is presently on Peninsula Terminal? A. And some other industry I believed would be located there in the future.

Q. In making that recommendation were you also influenced by the fact that if you and the Union Pacific purchased the Peninsula Terminal you could block the Southern Pacific from having direct access to the Rivergate area? A. Yes, that's right.

* * *

[279] Q. Page 8, if you will, sir, and I am now referring to the sixth line on that page where you say service is presently rendered at a superior level. Now, I take it that the service you are referring to is the service of the Peninsula Terminal Company? A. That's right, sir.

Q. In other words, the service that is rendered to the customer from the time Peninsula Terminal receives the car to the time Peninsula spots the car for the industry? A. That's right, sir.

Q. And in the reverse direction? A. Yes, sir.

Q. You do not have reference to the service from the North Portland interchange down to and other carriers such as the Southern Pacific? A. No, sir, I am talking about the Peninsula Terminal.

Q. All right. Page 2, if you will, sir, the ninth line from the bottom, where you refer to the on-line railroad traffic department's rate personnel. Would you define for me, please, what you mean by the words on line? A. Well, in Portland we have a number of off-line railroad general agents but I am talking to the ones that tend the [280] dockets, North Pacific Freight Bureau coast docket that have representatives of their carriers at this meeting or the joint docket in California.

Q. In other words, we are referring, of course, then, to the railroads that actually physically serve the States of Oregon, Washington, and California generally? A. Yes, they would call on the Southern Pacific, they would call on the Northern Pacific, Great Northern, Union Pacific, and the S. P. and S.

* * *

[281] Q. Now, the decline in traffic that Southern Pacific suffered from the Peninsula Terminal in 1967, do you believe that was because of the inadequate service that you have agreed with me exists? A. No, sir.

Q. What is your explanation, sir? A. It was due to the bankruptcy of one firm and a drop in the pole and piling business and the phasing out of Swift [282] and Company's operation.

Q. And I assume in making that statement that you have actually looked at the loadings from those various industries to make sure that this is the reasons for it? A. Yes.

Q. Now, if those three things had not occurred, was there any new traffic that Southern Pacific was handling to the Rivergate area, to or from the Rivergate area, the Peninsula Terminal area, I am sorry? A. I don't believe so.

* * *

[283] Q. Are you aware of the fact that there is now a standard size module for containers throughout the world?

A. No, sir.

Q. As to traffic man for the S. P. and S. have you had any interest in the location of containerization locations in this area? A. I have been following it without interest and my people have.

Q. And one of the most important would be the Japanese container ships? A. That's right, sir.

Q. Did the S. P. and S. send a delegation to Japan to investigate this? A. No, sir.

Q. Have other railroads? A. Yes, sir.

Q. Was the Southern Pacific one? A. I don't know.

Q. Was the Milwaukee one? A. I don't know.

Q. Do you know any of the railroads that did? A. Our parent lines did.

Q. Now about ports, are you aware of any ports that have sent delegations to the Far East to look into container shipping operation? A. I believe the Commission of Public Docks in Portland have [284] done it. They made a talk at the last advisory board on it.

Q. Would you agree with me that the importance of that type of operation is that the ships from Japan can move into a West Coast port, deliver all of their containers and then return to Japan for additional traffic and have all of the traffic from the West Coast distributed nationwide by rail? A. That's right, and even across the country.

Q. Has the S. P. and S. given consideration to the location of containerization facilities at Rivergate? A. No, sir.

Q. Are you aware of the fact that Datsun automobiles are presently being brought into Portland in special ships? A. No, sir. I am aware they are here but I didn't know they came in special ships.

Q. Well, are you aware of the fact that those ships unload a portion of their automobiles here—

[285] A. I am not aware that they are unloading a portion here or Seattle or what are you talking about, I didn't get that.

Q. (By Mr. Wilson) I am talking about the concept, doesn't it make sense to you if, in fact, the Japanese ships are coming in with Datsun automobiles and unloading at various West Coast ports that, if they could unload at one and distribute by rail that it might be advantageous to your railroad? A. I agree. I know that the Northern Pacific and the Great Northern, our parent lines, are very active in this. We [286] know every port on the Pacific Coast they are active to try to influence, I think it is six Japanese ships, if I remember correctly from, I remember Mr. Hanson's testimony, I think, that are being put into this service. Which port they are going to select or where they are going to locate I don't know. I was under the impression that the Commission of Public Docks facilities would be Terminal No. 4, not Rivergate, I might be wrong there.

Q. Does it strike you as an expert traffic man that Rivergate might be an excellent location for that type of an operation? A. It could be.

Q. But, if I understand your testimony correctly, you have not made any projections of traffic to or from the Rivergate area on behalf of the S. P. and S.? A. When I look at the area we are talking about and I see that originally a small portion of it is going to be filled in 1968 and it is going to run through to 1973 before they are completely or later, it is going to be coming in sections. I don't expect that to develop very quickly.

Q. It might develop even quicker, however, if the railroads took an interest in the development, would it not, Mr. Lawrence? A. I have taken quite an interest in the development. I have brought several people to the port.

We spent just as much time on the Rivergate industrial district, bringing [287] clients there that are interested in locating in the Portland area as any other railroad.

Q. If a railroad did not have direct access to the Rivergate area in your view as an expert traffic man, would they have the same incentive for locating traffic in the Rivergate or locating industry in the Rivergate area? A. I doubt it.

Q. (By Mr. Plöeger) On Page 3 of your testimony you refer to your Exhibit Ral-1, which is a copy of an agreement between the Milwaukee Railroad and the Northern Lines, including the S. P. and S. A. Yes, sir.

Q. That covers the now and in what way condition No. 2 and the Northern Lines merger case would be generally implemented, is that right? A. Yes, sir.

Q. Now, in the Northern Lines' merger case one of the conditions the Commission imposed was that the Milwaukee should have equal access to Portland in all of its industry, did it not? A. Yes. First, I would like to say I am not authorized to speak for the new merged company. I did not participate in any of the negotiations with the Milwaukee. All I can say [288] and all I am authorized to say is that the contract will have to speak for itself.

Q. I am not asking you now in connection with the contract. I am saying that the Commission has a condition to a Northern Lines' merger, including the operation of the S. P. and S. required the Northern Lines to grant to the Milwaukee operating rights to Portland and to all industry in the Portland switching district on an equal basis. A. To the best of our ability.

Q. Now, you say the Milwaukee now reaches Peninsula Terminal through its connecting carriers and joint rates and routes. Now, that is not the same thing as operating

into Portland and serving the industry on an equal basis, is it? A. No. At the present time you are reaching it, the connection with Northern Lines, through Spokane to the Twin Cities at Cheallis.

Q. And it is your intention that if you obtain control of the Peninsula together with the Union Pacific that you could block the Milwaukee's use of the Peninsula Terminal Company? A. No, sir.

Q. What is your purpose? A. To show that the existing rates, routes, and channels of trade that exist as of today will not be affected by the proposed acquisition of the Peninsula by the applicants.

Q. Is it your intention that after the Northern Lines are [289] merged that the Milwaukee will still be able to reach Peninsula Terminal Company in the same way they do now? A. No, sir.

Q. How would they reach it? A. I can't answer that.

Q. You don't know? A. I don't know.

Q. Now, is it not a fact, sir, that if the carrier who switches the plant or owns the Terminal Company that switches the plant has an advantage in the solicitation of freight over a carrier, any other carrier serving the same station? A. Normally it is felt that.

Q. And normally isn't there a delay when you switch through a reciprocal agreement than having an immediate carrier handle it for you? A. Yes.

Q. In fact, did you not testify in the Rock Island merger case? A. Yes, sir.

Q. And in that case did you not outline that there was a delay of 12 to 24 hours a day when the Union Pacific switched for the S. P. and S. in the zone 6 area in Portland? A. That is through the Barnes interchange that you are talking about, yes.

Q. And that was when you interchanged at North Portland or [290] at the main Portland Terminal Company interchange point? A. Yes, sir.

Q. You also said, did you not, in that case, that because of this delay the S. P. and S. and the two Northern Lines were at a disadvantage in serving the industries and obtaining a share of the business? A. That's right, sir.

Q. And that the Union Pacific used this delay in soliciting traffic against you, is that true? A. I believe so.

Q. Now, if the Milwaukee can only reach Peninsula Terminal Company through a switching arrangement rather than direct access to the Peninsula Terminal Company and equal voice in its affairs, will not the Milwaukee be at a disadvantage as against the Union Pacific and S. P. and S.? A. I do not know at this time where the interchange will take place.

Q. It won't take place at North Portland unless the application in this case is granted, isn't that true? A. I don't know.

Q. Is that because you don't know because you are unfamiliar with what the arrangement ultimately will be as between the Great Northern Pacific and Milwaukee or is that because you don't know generally? A. Because I don't know the negotiations that will be carried [291] on between the new company on the Milwaukee.

Q. Can the new company carry on negotiations on behalf of the Union Pacific and Peninsula Terminal Company also? A. I don't believe they can.

Q. And if they cannot, then would you expect that the Milwaukee would be able to make any kind of an arrangement with the Northern Lines for the use of the North Portland interchange tracks? A. I think Mr. Westergard testified that an interchange could be put in at East St. Johns and you could reach it through reciprocal switching at that point.

Q. So then we would set out what you mean by reciprocal switching is tariff connecting line switching? A. Yes.

Q. So the Milwaukee would be required on competitive traffic to absorb and S. P. and S. switch charge plus Peninsula division, is that right? A. Yes.

Q. And as you have testified, I believe this would require the revenue accruing to the Milwaukee to be substantially less than they would be in the case of either the Union Pacific or the Northern Lines? A. I don't know how substantially less it would be. I don't know what the cost would be.

Q. You don't know what the switching charge would be absorbed [292] are? A. Not at this time.

Q. What are they now on competitive traffic? A. Six cents.

Q. Six cents a hundred pounds? A. That is being adjusted on the Portland switching study.

Q. That there is a proposal to adjust the switch charges in Portland? A. Yes.

Q. And that is the tariff switch charges? A. Yes.

Q. And that is a pretty terrific arrangement that has not been accepted by everybody, is that not true? A. I believe all the railroads here hope to have it implemented at all common points in the Northwest sometime this year.

Q. Do you also expect to have your merger implemented sometime this year? A. I wish that was true.

Q. So we are all talking about perspective matters, are we not? A. That's right, sir.

Q. Then, in addition to the six cents a hundred that is currently in tariffs to be absorbed, the Milwaukee would have to absorb the division of the Peninsula Terminal Company? [293] A. Yes, sir.

Q. Do you know what those divisions are? A. Yes, I believe they were testified by Mr. Rockford here the other day.

Q. And that is \$29 generally? A. \$29.25 when the revenue is over \$60.

Q. Do you agree that the more a line-haul carrier has to absorb, the less interest it has in the development of traffic on connecting lines? A. It depends on how attractive the business is.

Q. And on the unit train, rates and others low rates commodities they don't even absorb, isn't that true? A. That is true in some cases, most cases.

Q. And if they don't absorb, then the shipper has to pay the switch charge on top of the line haul rate, isn't that true? A. That's right.

Q. If that is a fact, then that carrier is less likely to be the selected carrier for use by the shipper, isn't that right? A. That's right.

Q. Now, you say 1 per cent of the business that is now handled to and from the Peninsula Terminal Company is Milwaukee business? A. I would like to qualify that. It is Milwaukee business where you served as one of the, either the originating carrier [294] or one of the immediate carriers in over-the-road service.

Q. And we also might have served as a terminating carrier. A. Not as a terminating line.

Q. All traffic that originates on the Peninsula Terminal terminates on someone else's line if it is— A. (Interrupting) I see what you mean it could terminate on your line.

Q. Is it anticipated that if the Milwaukee extends its line to Portland that it might participate in a greater share of traffic to and from Peninsula Terminals? A. That's right.

Q. Provided it can give a service that is equal to that of other lines? A. That's right, sir.

Q. Is it true, then, that if the Milwaukee does not have joint ownership in Peninsula Terminal or to or from the Rivergate area and use of the interchange tracks, it would not be on an equal basis with your line or the Union Pacific, would it? A. No, not on an equal basis.

Q. I think it has been testified that the S. P. and S. performs a switching for the two Northern Lines itself and the Union Pacific at Vancouver now? A. That's right, sir.

Q. And that is under arrangement whereby the Union Pacific [295] has a right to serve all the industries in Vancouver? A. No, sir.

Q. Under its agreement? A. Anything that comes off the N. P. main line.

Q. All traffic off the N. P. main line, all industry? A. That doesn't include the Evan area of Vancouver which we serve direct.

Q. That is, the S. P. and S.? A. Yes.

Q. But they do have the right to, themselves, serve all the industry connected with the Northern Pacific main line in Vancouver? A. Yes, but the S. P. and S. does the switching for all four lines.

Q. And that works out well? A. Yes.

Q. And you take orders from all the four lines for whom you perform services? A. The joint agency and yard forces.

* * *

[301] WILLIAM H. KRAUSE

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Skirvin) Would you please state your name? A. William H. Krause.

Q. With what company are you associated? A. Crown Zellerbach Corporation.

Q. What position do you hold with that company? A. Assistant general traffic manager.

Q. Have you prepared written testimony to present in this hearing? A. I have.

Q. Is the statement I have handed to you entitled "Testimony of William H. Krause, Assistant General Traffic Manager, Crown Zellerbach" this testimony? A. Yes.

Exam. Shoup: The statement is marked Exhibit 38 for identification.

(Intervener's Exhibit No. 38, Witness Krause, was marked for identification.)

Q. (By Mr. Skirvin) Is Exhibit 38, this document, true and correct to the best of your knowledge and belief? A. Yes.

CROSS EXAMINATION

[302] Q. (By Mr. Weisser) Mr. Krause, my name is Weisser with Union Pacific Railroad. I have just a few questions concerning your statement. You make a statement on Page, in the second paragraph, I should say, on Page 1, toward the very bottom of the page it says "Being forced to consider expansion of its distribution complex known as Waterway Terminal Co. to the Rivergate Industrial area of north Portland." What portion of the Rivergate area is this expansion going to take place in? A. Well, it would be adjacent to the Ashgrove Lime and Portland Cement Company, the present location, and to the east thereof.

Q. It doesn't connect with Peninsula Terminal? A. No, sir.

Q. It is not within three or four miles of Peninsula? A. That is right.

[303] Q. Now, in your use of Waterway Terminal as a distribution facility, isn't it also true that you have a barge line which participates in joint through rates and routes?

A. There is a common carrier barge line named Wester

Transportation Company; which serves various locations on the rivers, and serves our plants as well as other plants, including some other paper plants, and moves traffic on through joint rates into Waterway Terminal for either storage or direct through shipment where the transfer is performed to rail cars, so they are joint water-rail rates.

Q. And this Waterway Terminal, by whom is that owned, do you know? A. Well, it is Wester Transportation—it is Waterway Terminal Company. It is a subsidiary company of Crown Zellerbach.

Q. I misspoke myself. Wester Transportation, by whom is that owned? A. It is a subsidiary company of Crown Zellerbach.

Q. That is a common carrier with a certificate under the appropriate Water Carrier Acts? A. Yes, sir.

Q. Through the Waterway Terminal Company and the handling of traffic, which is either stored or destined for that point for further distribution, all rail carriers participate in the routings that Wester Transportation has, is that correct? A. Yes.

[304] Q. That would include the Milwaukee and the S. P.? A. Yes, that is right, of course, depending on the areas. It can become rather limited. The Milwaukee's participation is rather limited. Is it not much of a factor?

Q. But the S. P. is rather broad, is it? A. Oh, yes, it is a main artery into California and beyond and through Ogden, Utah.

Q. In your handling of poles from your pole yard at the west extremity of Peninsula Terminal you draw on all railroads for cars, is that correct? A. Yes, all railroads that have cars in the area.

Q. Have you, then, received upon request cars from the Northern Pacific, the Great Northern, the S. P. and S.—well, strike that.

The P. S. & S. cars come from one of their parents, is that correct? A. I would assume so, except I have some—first, of all, the S. P. & S. has not all of the cars, the types we need, it has no drop-end gondola, 65-foot cars, at all, so the only cars that we load out on the S. P. & S. are flatcars. Those flatcars, I understand, are supplied out of available cars in the area. I believe that orders are placed with the S. P. & S. directly through S. P. & S. rather than through the joint agent.

Q. Well, then, you also receive cars from Southern Pacific and Union Pacific? [305] A. Oh, yes.

Q. As it stands now, have you received cars upon request from Milwaukee, from Milwaukee outbound routings from Peninsula Terminal? A. No.

Q. You are nodding your head, no? A. No. I'm sorry.

Q. But if Milwaukee is granted access to Portland as part of the northern lines' merger, would cars be made available to you notwithstanding their ownership or notwithstanding that they do not participate in ownership with Peninsula or have rights through the north Portland interchange? A. I would hope so. That is one reason we are anxious, we are very happy to see the Milwaukee in this case. It gives us another source of cars, which are very short supply. When there are not many cars over the whole system of these railroads.

Q. On the bottom of Page 3 of your statement, the next to last paragraph, you mention the extreme importance of single-line service because it guarantees single-line rates and removes the question of whether or not switching charges are absorbed. Is there any question as to whether or not switching charges are absorbed from your plants on Peninsula Terminal? A. Yes, it could very well be, depending on what the circumstances of movement are.

We ordinarily have through joint [306] rates, but to Oregon, for example, we would have to move out under switching charges and a local rate from Portland. We have instances wherein it is not a very good situation, although we are not alleging those.

Q. Have you ever had to pay a switching charge in traffic moving to or from your facilities at Peninsula Terminal? A. I can't say that we never have. To my knowledge, it would be very rare, if ever.

Q. Well, what would be the extent of your knowledge, would you know if it occurred in the last five years, say?

A. I might not. I would hope that if—I would not know unless someone reported it to me. As I say, it would be extremely doubtful, because I have looked at the pattern of our shipments and at the present time and the way our shipments are patterned and the area we serve, we would not have to pay these charges today.

Q. Now, have you been able to reach all the markets you desire from your north Portland facilities on Peninsula or have traffic from these markets reach these areas under— A. (Interrupting) Let me put it this way. As operations are presently conducted at both the pole yard and the flexible packaging division, we have been reaching our markets, yes, I might say to California, for example, from Peninsula Terminal we had only three shipments by rail into California, so you see that has not been a very important market at the [307] moment, but it could change at anytime.

Q. Have you had any difficulty in the past negotiating sea connections and rates so you will be able to reach your markets on a fair and equal basis? A. So far we have been able to remain competitive, but it is a struggle at all times because the more carriers that get involved in the joint rates, the more money there is to split up between

the carriers, and we have instances where, depending on the routes we want to use, we are not competitive. One route can be higher than another.

Q. So you use the route which has the lower level, is that right? A. Ordinarily, yes, surely we would.

Q. But you could still get to the same destination, is that correct? A. Yes, but your question was whether or not we, whether or not there is a problem in negotiating rates, and there always is. The more revenue that has to be divided between carriers, the more difficult it is.

Q. At the top of Page 3 you give some figures on delay time. This sentence, it says, "Of the one hundred seventy-seven shipments made during the twelve-month period ending November 30, one hundred fourteen or sixty-four per cent involved delays running from one day to twenty-six days in length." How do you compute your delays? [308] A. Not from the time a shipment is ordered, but from the time—we place orders in advance, we anticipate our requirements.

Q. How far in advance? A. Well, three, four, five days in advance at times. I can tell you on the basis of single shipments, if you want to pursue it. But the point is we don't count a delay until, if a car isn't there on the date we are asking that it be available, we count our delay from that date, not from the date of ordering.

Q. What about, say, you order five cars and you receive two of them two days before you ordered them and the other three right on the date you ordered them, would there be any delay there? A. No, we don't count that as a delay.

Q. What about the days you have the cars in advance where you can get them lined up? A. They are not of value, because, you see, poles move out in multiple shipments. If we have a length of pole or piling that extends

over the ends of, say, a sixty-five foot drop end gondola, you have to put in an, normally they put in a forty-foot flat-car and idler on either side, so we need three cars. We must order three cars for that one loaded car of poles or piling. We can't release that order until we have the three cars, so it doesn't do us a bit of good to have three in that case, or if it is a five-car order to have four. [309] We can't do a thing unless we have got all five. These are shipment delays, they are not car delays, car delay of shipments, because then I would have many times more delays. These are shipment delays, failure to ship on the day desired.

Q. I am not sure I have that clear. Let me ask you this question, maybe this will clear it up. Assume you ordered five cars and you received four on the date that you ordered them and you received one car two days late, would you count all five cars as being two days late? A. We haven't counted cars, we have counted only shipments. We are not saying these are the number of car days delayed. They are simply the number of shipments delayed. As I say, we have many more cars in the computation otherwise.

Q. Of these 114 shipments which involve delays, do you have any figures on what lines were handling each or do you have a breakdown? A. Yes, I have.

Q. Could you give that to me please? A. Would you like to look at it?

Q. Well, can you just read me the figures? A. Surely.

Q. To make up the total 114. A. Yes. Northern Pacific, 75 per cent of the shipments were delayed.

Q. How many shipments did you have via— [310]
A. (Interrupting) Well, there were four, one where the cars were all delivered on time and three late.

Southern Pacific, 34 shipments, 15 on time, 19 late.

Q. O. K. A. Union Pacific, 40 shipments, 12 on time, 28 late.

Great Northern, 81 shipments, 33 on time, 48 late.

S. P. & S., eighteen shipments, two on time, sixteen late.

Q. Have you computed the percentage on each of these?

A. I have.

Q. What would be the percentage late on each of these?

A. N. P., 75 per cent; S. P., 65; U. P., 70; G. N., 60; S. P. & S., 89.

Q. Now, these shipments, these 114 late shipments of a total of 177, these were all shipments that were destined to points on the line that furnished the equipment or their connections, is that correct? A. Yes, that is how we determined it in every case, that is right. In other words, it is where the carrier, where it was the outbound carrier, except in the case of the U. P.-S. P. route, where the U. P. makes the initial movement but the S. P. furnishes the car.

Q. Or the S. P. & S. could make that same movement, could they not, S. P. & S.; Southern Pacific route? A. No, not always, no.

Q. Well, through the Portland Terminal? [311] A. If we have routes.

Q. Do you have routes that way? A. We usually have routes, yes, to the territories we are serving.

Q. Do you have any other pole operations in the country that you know of? A. No, we have none other than this one.

Q. You don't have any basis for comparing whether or not this is relatively good performance for railroads nationally? A. I wouldn't, no. You mean as far as pole yards?

Q. Yes. A. I couldn't say.

Q. Isn't it true that the type of equipment you require is one of the scarcer types that railroads attempt to keep in inventory? A. It is.

Q. It is extremely difficult to satisfy the shipping needs of all pole yards with this equipment? A. It all depends on how you look at it. I always felt carriers should anticipate needs, and they certainly know that the needs exist on gondola cars, but they have never filled those needs.

Q. Is an average of four and a half days' delay per shipment something that you work with, then? A. We live with it, yes.

[312] Q. And you are able to conduct your business with it? A. We have been conducting it that way, but it places a lot of burdens on us because we compete with southern pine in some areas, with cedar and with other commodities like prestressed concrete poles and piling or steel poles and piling. Many of these alternate materials are available much closer to the market, and, of course, we are competing with a number of pole and piling yards right in the Northwest, all of which have different locations problems as far as railroads.

Q. You receive cars from S. P. now for your pole yard, so your basic support of the acquisition in this case is from Milwaukee, is it not, rather than S. P.? A. No, it is not.

Q. Isn't your prime reason for the pole yard to get access to the Milwaukee supply of special equipment? A. No.

Q. Then your only other request is to attempt to get speedier delivery of S. P. equipment, those are the two bases? A. We are supporting all applicants. We hope with the proposed purchase of the Peninsula Terminal by the S. P. & S. and the U. P., for example, if we stop there, when they own that, if they acquire it, they will give more

attention to our needs than we are presently getting, and if more people own it there will be more that have, you might say, direct access. It has the effect of putting our pole yard on these lines. [313] We are not on any of the lines today. We are on a little switching line.

Q. You are not asking for physical moves into your pole yard, are you? A. We don't want physical moves into the pole yard, no.

Q. You still want Peninsula to be retained as an independent company, do you not? A. We have made no statement as to what we want in that respect.

Q. I see. O. K.

Mr. Weisser: That's all.

CROSS EXAMINATION

Q. (By Mr. Tjossem) Mr. Krause, I gather from your testimony that your company supports the application of the S. P. & S. and U. P. to acquire the Peninsula, you believe that would be proper, but you would prefer that the other applicants have also be joined in that ownership? A. We are asking that all applicants be authorized to join in the ownership.

Q. But if the Commission concluded not to do that, you would still support the acquisition by the S. P. & S. and Union Pacific? A. Not unless the conditions of trackage rights are made a part of the total package.

Q. I thought you just said you felt if the S. P. & S. and U. P. [314] acquired it that they would see to it that you had better service than you are getting now? A. I didn't say that. I am hoping with more owners in there the service will improve in many areas.

* Q. Well, I notice in this period you covered on your determining your delayed shipments that you had 34 shipments by the Southern Pacific. Do you feel if they had access, if they had access during this same period that

you would have called on them oftener for furnishing cars? A. I am quite sure we would have

Q. Do you know what the destinations were on those 34 shipments? A. Well, they were points in California, I think there were several into Texas. One of the principle points in California is Oroville, California, which is served by the Western Pacific and the Southern Pacific.

Q. Now, I noticed— A. (Interrupting) We shipped both ways into Oroville, California.

Q. Via the Great Northern? A. G. N.-W. P. or W. P.-S. P. But the movement outbound, as I understand, takes longer when it routes out in connection with the G. N.-W. P. via the U. P.-S. P. today. On the other hand, in the securing of cars, if we are able to getting in cars, they can move—we have more directions to utilize them, so what we [315] have to do, we—when we are talking about these orders being late or these shipments being late, that doesn't mean we just sit by waiting for that. What we have to do, because they are so late and we have to manage to keep up some semblance of moving our orders out, we will switch our destination. Now, with a northern-route car it can move north and south, particularly like into Oroville, we have more flexibility to change than if we have an S. P. route because they are much more limited, and with Milwaukee there is virtually nothing.

Q. I gather what you are saying, if you had a shipment going to Oroville, for example, and you placed an order with the S. P. and is to be furnished by the Great Northern and if those cars weren't furnished you would then also at the same time be asking the Southern Pacific to furnish those cars? A. I don't know just how that works. The orders are placed with the joint agent and the—I might say, on pole yard shipments, with very few exceptions, the orders that we are supposed to use are

specified by the purchaser of the poles. They also give us, they give us a preferred route and then alternate routes so if we can't ship via the preferred we go to the first alternate.

Q. In other words, the routing of these poles actually is done by your buyer rather than by you? A. Exactly.

Mr. Tjossem: That's all I have.

[316] Exam. Shoup: Are there further questions of this witness?

CROSS EXAMINATION

Q. (By Mr. Delisi) Mr. Krause, for the benefit of the company near here, sir, for that matter for my benefit, I want to be sure it is clear how many facilities Crown Zellerbach has in what you term "the greater Portland area". Now, first, do you have in the City of Portland what you call the distribution complex, Waterway Terminals Co. A. Yes, sir.

Q. Referred to at the bottom of Page 1? A. Yes.

Q. Is that the facility located or served by the Portland Terminal Railroad? A. Yes, it is.

Q. Now, then, do you have a second facility, which is the pole yard, which is presently in Rivergate Industrial District? A. Yes.

Q. Presently served by Peninsula Terminal, right? A. Correct.

Q. Now, then, the third facility that you have purchased, that Crown Zellerbach has purchased, is the Swift and Company property adjacent to your north Portland flexible packaging division, is that correct? A. Yes.

Q. And that is in north Portland? [317] A. Correct. It is also on the Peninsula Terminal Railroad.

Q. That is referred to on Page 2 of your statement. Is the flexible packaging division presently in operation?

A. Oh, yes.

Q. And the new 200,000-square-foot warehouse will be in connection with that facility? A. Yes.

Q. And is that facility presently under construction?

A. No, it is not. Actually the consummation of the purchase is not, complete. We are about a week and a half away at the moment from completion.

Q. Pretty close to tying it up? A. It is tied up, but it hasn't come out of escrow yet.

Q. Details? A. Well, yes, but nevertheless.

Q. Is there also another facility in the Rivergate Industrial area on the southeast side for which you are presently in negotiation with the Port of Portland? A. Yes.

Q. Could you tell us generally where that property is?

A. Well, the area that is considered is adjacent to and east of the Ashgrove Lime and Portland Cement Company.

Q. Does it have waterfront? A. Fifteen hundred lineal feet of waterfront.

Q. Is that matter currently in negotiation? [318] A. Yes, it is.

Q. How close are you on that one? A. I prefer to await developments. We are, I think, firming it up rapidly.

Q. You want the horse in the barn? A. Well, that is where it should be before you talk about it.

Mr. Delisi: Thank you, sir.

The Witness: You are welcome.

Exam. Shoup: Mr. Green.

CROSS EXAMINATION

Q. (By Mr. Green) Mr. Krause my name is Mr. Green. Now, I did not get a copy of your statement so I do not know exactly what it said, but listening to your conversation and statements, do I gather that your interests in the ownership of the Peninsula Terminal Co. is greater

than your interest or as great as your interest in having cars of the type you wish available? A. We bring in this car-supply problem as an example of why we have this interest. It becomes pertinent because there is a proposal here to change the status quo as far as ownership of the Peninsula Terminal. That change may, we hope, should, we hope help car supply.

Q. Well, Mr. Krause, you mentioned being in competition. Have you made any inquiries as to the problems of your competitors in this area for large cars? [319] A. No, I have not.

Q. Would you feel that your delay is unusual as compared with other comparable industries requiring that type of car? A. I don't—I have no feeling about it because I have made no comparison.

Q. Once the cars are there and loaded and they are ordered out, do you have unusual delay in having those pulled from your industry? A. I haven't heard of any.

Q. You mentioned about certain improvements you hoped would happen. This may give you an opportunity to speak of those improvements. Do you have a suggestion as to how the actual improvements would or should be made or what improvement would help you? A. Well, sir, I guess as far as car supply, regardless of what happens, my only suggestion is that more cars would be made available. As far as other improvements, mention was made yesterday of the condition of the Peninsula Terminal physically insofar as it being viable to becoming a larger or more heavily saturated traffic railroad. A disability we have had all of the time we have been there, of course, is the fact that there is a 22 degree curve in the line. That precludes us from moving 85-foot flatcars into the pole yard. Now, we have a disability in the pole yard itself. We couldn't move it at the moment within the pole yard gate, but we would straighten [320] that out if there was, if the other was straightened out.

Q. Mr. Krause, if this trackage was improved so as to handle the longer cars, this would actually improve the conditions you are thinking of in that area? A. Physically, yes, that's right.

Mr. Green: Thank you.

Exam. Shoup: Are there any further questions of this witness:

(No response.)

Exam. Shoup: The Examiner has one question, it relates to the exact location of your pole yard. Could you identify on a map, which has been identified as Exhibit 37 in this record, the location of your pole yard?

The Witness: It would be right here at the very end of the Peninsula Terminal (indicating).

Exam. Shoup: Is that at the eastern—

The Witness (interrupting): It is at the western end. There are 40 acres approximately that lie in here (indicating) in the Rivergate, on the so-called Rivergate property, and the spur runs right in through here (indicating) and this is the end of the main line of Peninsula Terminal at the present time.

Exam. Shoup: The pole yard, then, is located at the end of the Peninsula Terminal line which terminates at or near the Watergate project, is that correct, sir?

The Witness: Near the Rivergate project.

[321] Exam. Shoup: And the Swift property is located in a block described on the map as 32, is that it?

The Witness: No, sir, the Swift property is located—well, it is located about here (indicating), I guess, because—about here (indicating), because the flexible packaging division is right here (in-

dicating). I think that represents flexible packaging and the Swift property lies in here. (indicating) and it is adjacent to the flexible packaging plant of Crown Zellerbach.

Exam. Shoup: What is the distance from the main line of the S. P. & S. on the Peninsula Terminal line, is the Swift property located, is it a half mile?

The Witness: About four blocks. The main line runs right here (indicating). The present flexible packaging plant is right adjacent to the main line and—

Exam. Shoup (interrupting): The Swift property—

The Witness (interrupting): Is adjacent to that, so it would be—

Exam. Shoup (interrupting): About 500 yards from the line?—

The Witness: Yes.

Exam. Shoup: Thank you, sir, the Examiner has no further questions

FURTHER CROSS EXAMINATION

Q. (By Mr. Weisser) Mr. Krause, could you point out where your proposed Waterway Terminals would be on the Willamette River [322] side of Rivergate Industrial area? A. It is a little hard to identify, but it would be right in here (indicating). Here is Ashgrove Lime (indicating), it would be adjacent to Ashgrove Lime.

Q. Near 34 on the map? A. Yes, 34 on the map, it would run like that, 1,500 feet across the front.

• • •

[326] RONALD W. McINTOSH
was sworn and testified as follows:

[327] DIRECT EXAMINATION

Q. (By Mr. Weisser) Would you state your name, please. A. My name is Ronald W. McIntosh.

Q. By whom are you employed? A. I am employed by the Union Pacific Railroad Company.

Q. In what capacity? A. General freight agent rates and division.

Q. Have you prepared a statement for this proceeding? A. I have.

Q. Has it been marked as Exhibit 29, to your knowledge? A. Yes, sir.

Q. Do you have a copy of what has been marked as that exhibit before you? A. Yes, sir.

Q. Is the content of this exhibit true and correct to the best of your knowledge, information and belief? A. Yes, sir.

. . .

CROSS EXAMINATION

. . .

[329] Q. What interest does Union Pacific have in a receiver on the Southern Pacific lines in the State of Arizona? A. They would have considerable interest if a shipment is originating from a point on our line to industry in Arizona in establishing joint through rates with the Southern Pacific.

Q. Let's talk about a shipment originating on the Peninsula Terminal. What interest does the Union Pacific have in the shipper or in the receiver in Arizona for that shipment from Peninsula Terminal to a point on the Southern Pacific in Arizona? A. We would have an interest with respect to if the rate was published from North Port-

land. However, if the rate was published from Portland then you absorb our noncompetitive switching charges and divisions to us and our interest would not be as great.

Q. In other words, on such a shipment all you would get would [330] be the switching charge. A. That's correct, sir.

Q. As a matter of fact, you would always get that switching charge because it is the only way that shipment could move via S. P., isn't that a fact? A. That is correct.

Q. So Union Pacific as a railroad really has no interest in the shipments such as that or the interest of the shipper or the level of the rate does it, sir, because it gets its switching charge no matter what the level of the rate, isn't that a fact? A. As I said just previously, we would have an interest if we establish a rate from North Portland, we would have an interest.

Q. In the switching charge? A. We would have an interest in a joint through route with the Southern Pacific.

Q. And your interest would be the switching charge that you would receive. A. That's correct.

* * *

[331] Q. Have you made any projections of what traffic might be available from the Rivergate area through the Peninsula Terminal which Union Pacific would have an opportunity to solicit? A. No, sir. I will say again I am a rate officer and I do not project traffic. We handle strictly rate matters.

Q. I appreciate that, sir, but I am attempting to cross-examine you on the fact that you have indicated that the industries [332] will be adequately served. I would like you to tell me what is your definition of adequate service from the North Portland interchange to the East Portland interchange with Southern Pacific. A. To be adequately served I am speaking of rates, the establishment of the present joint through rates that we had with your line.

Q. All right, so that we both understand each other then, when you say that all industries will be adequately served, you have no reference to physical service but only to rate treatment. A. No, sir.

Q. Is that correct? A. That is correct, rate treatment.

. . .

[333] Q. Now will you tell me, sir, why Union Pacific opposes the Southern Pacific application for relief under Section 35 and Finance Dockets 24890 and 24891 and why the Union Pacific opposes the Southern Pacific's petition for inclusion under Section 52(d) of the Interstate Commerce Act. A. One of the most important fundamentals of any business is to protect your investment and interest. We certainly have a large investment in our facilities that serve Peninsula Terminal Company.

Q. So am I correct in understanding your answer that what the Union Pacific fears is that if Southern Pacific has a direct connection to Peninsula Terminal that Union Pacific will lose business? A. Correct.

Q. And that is the reason for your opposition? A. Yes, sir.

Q. And by opposing Southern Pacific, and let us say successfully opposing them in this proceeding and becoming a joint owner with the S. P. & S., is it your belief that that will then block the Southern Pacific from access to the Rivergate area through the Peninsula Terminal? A. No, sir, that is not my belief.

Q. It is not. What is your belief? A. You can still handle traffic through joint rates and routes [334] as you do today.

. . .

[334] Q. Now, would your testimony be the same if this record were to show that it were in the public interest for Southern Pacific to have direct access to Peninsula Terminal?

. . .

A. Yes, and at the same time we are protecting the investment of the industry by establishing through rates and routes. We always have the public interest in mind when we negotiate joint rates.

Q. (By Mr. Wilson) What capital investment does Union Pacific have in Rivergate today? A. I cannot answer that.

Q. What capital investment did you refer to here? A. Investment of properties, of railroads serving or connecting [335] with the Peninsula Terminal.

Q. In other words, the line from Albina yard—in other words what you are referring to is the investment in physical facilities of the Union Pacific between Albina yard and the North Portland interchange with Peninsula Terminal, is that correct? A. Yes.

Q. What is that investment? A. I have no idea.

Q. On page 3, sir, the last portion of that first full paragraph at the top of the page where you indicate that it will be the policy of the applicants in acting upon such requests not to discriminate or show any partiality toward connecting rail lines, is that the policy that is in effect today or is this a change? A. No, sir, the same policy is in effect today.

CROSS EXAMINATION

[335] Q. (By Mr. Merrill) Mr. McIntosh, referring to page 2 of your statement, the last sentence of the second paragraph, you said, "Likewise, on traffic in which Milwaukee participates through joint routing, no switching charges are passed on to any industry." Then on pages 3 and 4 I believe you discussed the new [336] switching absorption arrangement which the railroads serving Portland are attempting to work out. I understand that the Peninsula Terminal Company is compensated by a division of the through rate, is it not, sir? A. Correct.

Q. But for the purpose of the absorption of the switching charges by the line-haul carrier, is that compensation paid to Peninsula Terminal Company treated as though it were just a switching charge? A. What switching charge are you referring to now?

Q. Let's take an industry located on Peninsula Terminal. Today it has its switching performed for it and no switching charge is assessed against the industry, is that right, sir? A. That's right at Peninsula Terminal.

Q. If this charge arrangement goes into effect as the president of the railroads have tried to agree on, and there must be, for example, a minimum revenue of \$100 remaining to the line-haul carrier, is that right, sir? A. That's right.

Q. Then assuming that the Union Pacific brings a car into Portland, would it deduct from the revenues which it earns and the division which is paid to the Peninsula Terminal Company? A. No, sir.

Q. So that the Peninsula Terminal Company earns a portion of that revenue, it has no effect at all as to whether the Union [337] Pacific will or will not perform the service with no switching charge to the industry. A. That is correct.

Q. Now, if the Milwaukee should come to Portland and bring a car into Portland and give it either to the Union Pacific or the S. P. & S., it would have to pay a switching charge, would it not, sir? A. Yes.

Q. And also whatever revenue is paid as a line-haul division to the Peninsula Terminal would be taken out of the—strike that.

Whatever revenue the Peninsula Terminal receives would not be treated as part of the Milwaukee's revenue, would it? A. No, sir. You would have to absorb that.

Q: In this case, then, it is very possible, is it not, that by the time the Milwaukee paid either the Union Pacific or the S. P. & S. a switching charge that its revenue would fall below the minimum and the shipper would have to pick up the switching charge, is that not right, sir? A. The shipper could pick up the deficit if it was lower than the switching charge, he could pay the deficit.

Q. And in that situation, in your opinion, sir, it would not be very likely that the shipper would use the Milwaukee service if it meant an additional cost to the shipper, is that right, sir, assuming that by using the Union Pacific, for example, he [338] could avoid such charge? A. I can't see where this minimum hundred dollars is going to come into play too often. Anything less than that certainly they would use your service as well as ours.

Q. Yes, but wherever that does come into operation it is not likely, is it, that the shipper would use the Milwaukee route if it cost them more money than by using the Union Pacific's route? A. Yes, that could be true.

Q. You indicate, sir, on the bottom of page 2 of your statement that "applicants propose to maintain the present rail rate-making policies and permit those line-haul carriers not having a physical interchange with the Peninsula Terminal Company at North Portland, Oregon, to reach industries on the latter's line through joint rates or routes to the same extent as such rates and routes exist today." I am not sure just how much you are operating there, Mr. McIntosh, if you keep the rates on the same basis as they are today and the Union Pacific decides to make a reduction in its rates in the future. That doesn't guarantee that the Milwaukee would be able to participate in that traffic in the future, does it? A. I don't understand your question.

Q. If you maintain in connection with your connecting lines the rates and routes that are in effect today, then how would the Milwaukee be able to compete against the Union Pacific should [339] the Union Pacific elect to reduce rates over a single line route? A. From what points are you speaking? You have the same right to make rates on your own line as we do. I answered this question for Mr. Wilson, what the rate-making policy is.

Q. Let's look a minute, Mr. McIntosh, if we have a joint rate with the Union Pacific we can't bring the traffic to Portland, can we, if it is going to a Portland terminal industry? A. That's correct.

Q. There wouldn't be any joint rate that would apply via Portland, would there, where we would interchange it to you in Portland? A. No, not today there isn't.

Q. It would have to be perhaps Omaha, Nebraska, is that right? A. You are speaking of the "C" traffic, it could be Omaha, it could be Marinco, of course with certain restriction of routing on the "C" origin lines or destination.

Q. There would be certain restrictions. The only wide open junction would be Omaha, would it not? A. Correct.

Q. Assuming we had our choice, then, of giving up certain traffic to you at Omaha or bringing it into Portland, even to get our haul as far as Omaha you would have to reduce the joint rates the same as you would a single-line rate, is that right, sir? [340] A. That is about right. We have established rates today. I can't understand what you are asking.

Q. Well, we have the rates today and they are competitive, are they not? A. Yes.

Q. But if in the future you maintain the rates as they are with your connections but they change them as they are for you, let's take the rate up from the State of Washington

into Oregon for the movement. We would have an interchange with you at what point, sir? A. Chehalis and Marineco.

Q. Chehalis and Marineco. A. Also in Tacoma in some instances.

Q. You would have—let's take a movement from Spokane, is that a good point, to Portland. The Union Pacific could provide a single-line service, could it not, sir? A. That's correct.

Q. And if you elected to reduce your single-line rate over the Union Pacific and you met your commitment here to maintain the rates and routes in connection with the Milwaukee, the Milwaukee has become noncompetitive, has it not, sir? A. No, sir, I would not say that. You have the same right to establish the same rate as we have. That is true in all this rate making. Take these competitive points, you have met all the rates that have ever been published or posted.

[341] Q. You are holding out this inducement to the Milwaukee that you will maintain these same rates and routes with the Milwaukee that you have in effect today? A. That's right, and these same rates and routes that we have in effect with the Milwaukee today out of Washington are to points that are noncompetitive to your line.

Q. Do they apply out of Spokane, sir? A. No, sir, no competitive points.

Q. Are there any points where the Milwaukee and the Union Pacific have joint rates from common origins to Portland? A. Not to my knowledge in the Pacific Northwest.

Q. You know of none, sir? A. No.

Q. Do you hold yourself out, however, to make the same reductions via joint-line routes that you would make via single-line routes in the future, Mr. McIntosh? A. I don't understand your question.

Q. If you have a single-line rate via Union Pacific from origin to destination, the origin is served by the Milwaukee road, are you willing to join in any joint-line rates on the same reduced rate basis from those origins to industries on the Portland terminal? A. Those are not from a—

Q. (Interrupting) Excuse me just a minute. Would you make that on the Peninsula Terminal instead of Portland terminal? [342] A. Not from any competitive station.

Q. So you are not holding out any hope that the Milwaukee would be able to participate in such joint-line rates in the future, are you, sir? A. You wouldn't participate from competitive stations. You would publish your own rates from these competitive stations to Portland and you would reach the Peninsula Terminal Company through the absorption of switching charges.

Q. It is true, is it not, that the railroads in publishing rates must justify them costwise? A. Yes, sir.

Q. And is it generally true, sir, that you incur additional costs as more intermediate carriers are required in the movement? A. You say you acquire additional cost. Your revenue becomes less when you divide the revenue.

Q. And the more interchanges that must be made, inter-line switching, of course, generally the higher the costs are also, is that right? A. That's correct.

Q. So if the Milwaukee does not directly reach the Peninsula Terminal Company, would not the Union Pacific have generally a cost advantage over the Milwaukee in publishing rates so that it could justify in some instances lower rates than the Milwaukee could publish, is that possible, sir? [343] A. Are you speaking from competitive points?

Q. Yes, sir. A. I will say again, you will join in rates from competitive points and you always have.

Q. I am asking you, sir, is it possible that the Milwaukee's costs may be higher than the Union Pacific's for the same type of haul from the same origin to industries on the Peninsula Terminal? A. Yes, your costs would probably be higher.

Q. If we do not reach the Peninsula Terminal railroad directly. A. Yes.

Q. I believe on the last page of your statement, Mr. McIntosh, you say in the last sentence that the Milwaukee and the Southern Pacific should only be permitted to participate in traffic from or to these industries through present or proposed rate application, which is the recognized rate-making method of all rail carriers not physically serving any respective area. Do you have in mind there that we should only reach these areas through joint rates with the carriers that actually reach the Peninsula Terminal railroad? A. Yes, sir.

Q. And this is a recognized rate-making method of all rail carriers not physically serving any respective area according to your statement— A. (Interrupting) Yes, sir.

[344] Q. The S. P. & S. does not physically reach Terminal 4, does it, sir? A. Yes, they have rates applying to Terminal 4.

Q. Yes, I say do not physically reach Terminal 4. A. They do not switch it.

Q. They do not physically serve that area, is that right, sir? A. They serve that area, yes. They have rates there.

Q. Physically serve the area, Mr. McIntosh. A. What do you mean by physical?

Q. They do not operate in or out of Terminal 4, do they, sir? A. No. We do the switching at Terminal 4.

Q. In other words, you don't require the S. P. & S., then, to reach Terminal 4, only by publishing and joining in joint rates with the Union Pacific, is that right, sir?

A. They have rights out there.

Q. And that is the way a railroad can protect itself against having to join with another carrier in joint rates is by having its own rights, either trackage rights or its own line, as the case may be, to reach that area itself, is that right, sir, that is how a railroad can protect itself against having to join with another carrier in joint rates and be subject to the willingness and cooperation of that carrier in establishing joint rates? A. Well, all railroads desire to protect their own respective territories where they have industries. It is our policy that [345] we should have joint rates instead of invading each other's territory.

* * *

Q. (By Mr. Merrill) Does this mean that the Union Pacific then is willing to join in joint rates with the Milwaukee from all origins to and from Peninsula Terminal Company? A. Many origins in the Pacific Northwest we will negotiate joint rates with you.

Q. You will negotiate or join with us? A. We have rates with you today.

Q. From noncompetitive origins only. A. Yes.

Q. Do I understand it would be your policy to liberalize your joint rate structure here so that the Milwaukee could join with the Union Pacific in joint rates from all origins in the Pacific Northwest? A. Noncompetitive origins with your line we have joint rates today and we are willing to negotiate rates where we do not have rates.

Q. And you are willing to negotiate from the other origins? [346] A. Noncompetitive origins.

Q. Noncompetitive origins you are willing to negotiate. A. Yes.

Q. And this, however, would exclude the Milwaukee from joint rate participation from major points in the Pacific Northwest, would it not, such as Spokane, Seattle, Tacoma? A. Yes, from competitive points it would.

Q. As a matter of fact, sir, when the Union Pacific decides whether or not it will enter into a joint rate it considers its own interest very prominently, does it not, as to whether or not it will permit the Milwaukee to join with it in a joint rate? A. It considers the interest of the shipper.

Q. You consider your own interest as well, sir? A. Certainly, we consider everybody's interest when we are negotiating a rate.

Q. And to the extent that this might divert traffic from the Union Pacific to the Milwaukee or short haul the Union Pacific, this would be a factor that would have strong bearing on whether the Union Pacific would enter into such a rate, is it not? A. No, sir. A short haul, I don't understand what you mean by short haul. We negotiate a rate from a noncompetitive point, on your line we have established junctions where these rates and routes apply. If it originates on your line, we have an established route via Chehalis and you get your long haul and we [347] get our short haul.

Q. What you are saying, Mr. McIntosh, is you don't conceive any possibility of joining with the Milwaukee in any joint rates from competitive origins to or from Peninsula Terminal Company, is that right, sir? A. Right to the same extent you join with us in rates and rights from competitive origins, to competitive origins.

Q. At the present time we wouldn't have any power to join in rates where we would deliver to or from Portland because we don't reach there, Mr. McIntosh, is that right? A. Right, you don't reach Portland.

* * *

Q. (By Mr. Crabtree) * * * Can you tell us whether line-haul rates of the carriers serving Portland apply to the industries on Peninsula Terminal Company? [348]
A. Yes.

Q. Does that not in effect amount to an absorption of this charge, this \$29.25? A. Yes.

Q. Mr. McIntosh, on page 3 of your testimony you refer to the agreement between the presidents of the railroads. Can you tell us what, if any, effect this agreement between the presidents has on that \$29.25 charge? A. Are you through with your question?

Q. Yes. A. It will have no effect on the \$29.25. It will have no effect. The railroads still serving the industry on Peninsula Terminal will absorb the Peninsula Terminal division.

Q. Mr. McIntosh, on shipments of lumber intrastate from southern Oregon, say, to Peninsula Terminal Company, is there a switching charge on such shipments? A. If there is no joint through routes there is a switching charge.

Q. We couldn't hear you. A. If there is no joint through route there is a switching charge.

Q. Do you know whether the revenues of such a shipment would permit the absorption of those switching charges under this \$100 minimum that you mentioned at the bottom of page 3 of your testimony? [349] A. Normally on lumber it would load heavy enough that it would.

Q. And the same question regarding grain shipments from eastern Oregon, do you know what the situation would be there as far as the \$100 minimum is concerned? A. Grain shipments from eastern Oregon, this proposed switching study will not come into play as we have joint rates with the northern lines. In other words, their rates that apply into Portland also apply to industries on our line and Albina where grain terminals are which they cannot reach directly.

FURTHER CROSS EXAMINATION

Q. (By Mr. Wilson) Mr. McIntosh, do you consider that Rivergate is Union Pacific territory? A. Yes, it is located on our line.

Q. And that is the basis, then, for your objecting to the Southern Pacific or the Milwaukee reaching Peninsula Terminal because Rivergate is U. P. territory. A. Yes, sir.

[350] Q. All right. Now I want to make sure you didn't misspeak yourself in answer to a question when you indicated that the line-haul rates apply to Peninsula Terminal. That is not a fact as to all line-haul rates, is it, sir? A. As to the fact where there are established rates, yes.

Q. Isn't it a fact that there are line-haul rates from points in Oregon on the Southern Pacific which do not apply to Peninsula Terminal? A. That's true, yes.

Q. So you didn't mean to convey by your previous answer that all line-haul rates apply to Peninsula Terminal. They do not, do they? A. No, sir.

REDIRECT EXAMINATION

Q. (By Mr. Weisser) Mr. Wilson just asked you whether line-haul rates apply to Peninsula. If a line-haul rate did not apply to Peninsula Terminal is there a means of getting the traffic to Peninsula without assessing an extra charge to shippers? A. No, sir.

Q. Isn't there a switching tariff, a switching charge? A. That is an extra charge.

Q. Is that passed on to the shipper or absorbed by the line-haul [351] carriers? A. Passed on to the shipper. If the connecting line-haul rates do not apply to North Portland there would be a switching charge that would be passed on to the shipper consignee or consignor.

Q. Maybe I misunderstood your direct testimony. I thought you said as it stands now there are no charges passed on to shippers that go to Peninsula Terminal. A. I am speaking of Peninsula Terminal Company's division.

Q. What about a switch charge that would be assessed either S. P. & S. or S. P.? Have you determined whether or not any shippers at Peninsula are required to pay switch charges for that? A. I have never heard of a shipper of Peninsula Terminal paying a switch charge to my knowledge.

Q. Traffic is moving, then, on joint through rates to Peninsula, is that right? A. Generally full-line rates on commodities being handled in the Peninsula Terminal area to points on the S. P. in Oregon.

Q. In Oregon. A. Yes, but if it happened to be a commodity where there was not a published joint through rate, then there would be switching charges assessed.

Q. Now just so I get this straight then, your answer to the question of Mr. Wilson whether or not all line-haul rates apply [352] to Peninsula Terminal, this may be true but those rates on which traffic is moving do apply to Peninsula Terminal. A. Yes. We have through joint rates with the S. P. from points in Oregon to industries from or to industries on Peninsula Terminal Company covering commodities they handle. There could be exceptions, there may be some commodities where there are not joint through rates.

Q. If a shipment develops or movement develops, would it be the policy of the carriers to afford the same type of rate making to commodities presently moving?

Q. (By Mr. Weissér) Union Pacific, S. P. & S. and Peninsula Terminal, A. Are you speaking of joint rates now?

Q. Yes. A. We have negotiated with the S. P. on many occasions establishing rates to and from North Portland, to or from the Rivergate area.

Q. Now, concerning the \$100 minimum that Mr. Merrill inquired of, if Union Pacific on a direct haul has a level of revenue which is a hundred dollars or less itself, would there be any switch charge passed on to a shipper on the Peninsula Terminal? A. No, sir. If the revenue is less than a hundred dollars we deliver the shipment to Peninsula Terminal.

Q. And would absorb Peninsula Terminal switch charge. [353] A. Yes. Peninsula Terminal is not involved in this Portland switching study.

Q. So the switching study and the criteria that you have listed here would not apply to the \$29.25 charge that Peninsula assesses and is absorbed by the line-haul carrier. A. That's right.

Q. Now, if the Milwaukee is afforded access into Portland under the Northern Lines merger it will become a single-line carrier to Omaha, Chicago and a number of points east of here, will it not? A. Correct.

Q. In fact, it will be in a position to take the lead in rate making, would it not, on those common points? A. They would. Their rate officers would join in the committee, the Transcontinental Freight Bureau and have the same rights and say in making rates as any other line.

Q. They presently do from other points where they serve transcontinentally. A. Yes.

Q. You were asked a question also as to costs involved in handling traffic. The costs of course vary with the level

Mr. Wilson: Which carriers?
of traffic, do they not? A. That is right.

Q. So, if the Milwaukee were attempting to switch a car into North Portland, this cost would naturally be somewhat higher [354] then, than, say, a train of S. P. & S. traffic which maybe had twenty or thirty cars? A. Yes.

[355] "Question: I will ask you from your knowledge as to whether the rate-making policies of the Milwaukee and the Southern Pacific with respect to joining in joint through rates from competitive and non-competitive points or refusing to join in those rates that you described with respect to the Union Pacific is the same or any different than the policy of your company.")

A. I would say their policy is similar. We will negotiate rates from noncompetitive points. In some respect they may not join in it.

Q. (By Mr. Tjossem) What I am getting at is this, Mr. McIntosh will the Southern Pacific as a matter of policy, for example, join with your company in making a joint rate over some junction from a competitive point to and from competitive points equal to their single-line rate?

[356] Q. (By Mr. Tjossem) Yes. A. They wouldn't join us in rates from competitive points.

Q. They would not? A. They would not. Same as our policy.

Q. Is the Milwaukee's policy the same as the Southern Pacific policy? A. Yes, sir.

[362]

A. O. BARTELL

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Weisser) Would you state your name, sir.
A. My name is A. O. Bartell.

Q. And you are the owner of the Serendip Industrial Minerals of Portland, Oregon, are you not? A. Yes.

Q. Have you prepared a statement for this proceeding?
A. Yes, I have.

Q. And this has been marked as Exhibit-31, Mr. Bartell. The Examiner I believe has the original there and I believe you have a copy or perhaps even the original of the carbon from which this was Xeroxed before you, do you not? A. Yes, I do.

Q. Is this your statement in this proceeding? A. Yes, it is.

Q. Are the facts contained therein true to the best of your knowledge and belief? [363] A. They are.

Mr. Weisser: I would offer Mr. Bartell for cross-examination, Mr. Examiner.

CROSS EXAMINATION

Q. (By Mr. Wilson) Mr. Bartell, my name is Wilson representing the Southern Pacific Company. A. How do you do.

Q. Can you indicate to me, sir, what you intended to convey to the Commission by the words "sympathetic service"? A. I will cite a specific example. Recently we had a car come in with wood chips on the top of the car. Instead of having a lot of trouble with it I went over to Bill Kavet. I said, "Come and look at my car." He came over and looked at it. He said, "I will see that you get paid," and I was promptly paid, and this is what I call sympathetic service.

Q. Am I correct, sir, since your shipments are received from the north of Portland, the states north of Portland, that you have very little use for Southern Pacific service moving south into the California area, is that correct? A. None.

Q. So it makes no difference to you whether or not Southern Pacific has direct access to Peninsula terminals since you do not use their services. Is that a fair statement? A. Except that I would like to deal with the people with whom I do business that I am a customer of.

[364] Q. So if you, on the other hand, were a shipper shipping to points to or from Southern Pacific points, your position would be that you of course would want to have Southern Pacific in there. A. That's correct.

Mr. Wilson: Thank you. That's all, sir.

CROSS EXAMINATION

Q. (By Mr. Ploeger) Mr. Bartelt, I am Warren Ploeger attorney for the Milwaukee Railroad. A. How do you do.

Q. Could you tell me where your supply of rocks in Canada come from. A. Oliver, British Columbia.

Q. Via what route do they move? A. I believe that moves in general on Great Northern.

Q. Where is Oliver? Is it on the Canadian Pacific? A. Yes, I believe it is. I am not too familiar with the rail lines up there so I can't answer you knowing the facts.

Q. And you don't know whether that comes via Vancouver, New West Minister and Great Northern to Portland? A. I don't remember, no, sir.

Q. Do you have any movement in here by the Northern Pacific from Canada? A. It could be. As I say, I don't recall the line that that comes on. It could be N. P. from Oliver, it could well be.

[365] Q. Does any move in on the Union Pacific? A. No, but I anticipate a movement.

Q. From where? A. It will come out of Idaho.

Q. And you say also you have rock from points in north of Spokane in the State of Washington. Where is that.

A. From Northport, Washington, and Chewelah, from Addy and Meade.

Q. Are those all points on the Great Northern? A. Yes, sir.

Q. Do you ever have any rock come from points like Metaline Falls? A. No.

Q. If there should be locations on the Milwaukee Railroad from which you could draw rock and the Milwaukee served Portland, would you like to have the Milwaukee also have an interest in this Peninsula Terminal and give you direct service? A. If this were true, but there is nothing in the foreseeable future that would change my present position.

Q. You mean that is just because there is no present movement from a point on the Milwaukee that you know of. A. Correct.

Q. Do you know as a fact that if the Milwaukee comes to Portland it will also have a connection with the Canadian Pacific at Sumas? [366] A. No, I do not know that.

Q. And give direct service to Portland, you didn't know that? A. No, I did not.

Mr. Ploeger: I have no further questions, Mr. Examiner.

Exam. Shoup: Mr. Green

Mr. Green: No questions

Exam. Shoup: Any further questions of this witness?

(No response.)

Exam. Shoup: The witness is excused. Thank you for appearing.

(Witness excused.)

[373] NORMAN E. FORTIER

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Young) Would you please state your full name and spell your last name, please? A. Norman E. Fortier, F-o-r-t-i-e-r.

Q. What is your business address? A. 5200 Northwest Front, Portland, Oregon.

[374] Q. Who is your employer? A. Oregon Steel Mills.

Q. In what capacity do you serve the Oregon Steel Mills? A. I am their traffic manager.

Q. Does the Oregon Steel Mills have a plant in Portland, Oregon, at this time? A. Yes, sir.

Q. Where is it located? A. At 5200 Northwest Front.

Q. Do you propose to locate another plant in the Portland area? A. Yes. We have 150 acres in the Rivergate Industrial District,

Q. Is that being constructed, that plant, at this time? A. It is in the process of construction, yes.

Q. What will be manufactured at that plant? A. The first phase is a steel plate rolling mill.

* * *

[375] Q. Mr. Fortier, is this the first steel plate mill in the entire Northwest? A. Yes, sir.

Q. Why did you locate at Rivergate? A. Well, it had a lot of expansion room. It is the center of a transportation hub, both rail transportation. It had lots of room for other industries nearby hopefully that will use steel plate.

* * *

[376] Q. Is your company related to another company, affiliated with another company in any way? A. We are a division of Gilmore Steel Corporation of San Francisco.

Q. Does Gilmore Steel Corporation have its own iron ore deposits? A. Yes, sir. We own the Shasta iron ore deposit at Shasta Lake in northern California.

Q. That is the Mount Shasta area? A. Yes.

Q. And that is adjacent to what railroad? A. Southern Pacific.

Q. Does Gilmore plan to mine the ore in its deposit at Shasta? A. Yes, as soon as it is economically feasible to transport it.

Q. How will that iron ore be shipped? A. Well, the only feasible way or the only economic way to move iron ore is to move it in trainload lots, unit trains they are called.

* * *

[377] Q. Do you support Southern Pacific Company in its application to get direct access to Rivergate? A. Yes, we do. We feel this is the only way that this unit train, principle is practical. In order to get ore from the Shasta deposit to Rivergate, it is imperative that the Southern Pacific get into Rivergate.

Q. What other advantage will there be to the public and to your company if the S. P. application is granted? A. Well, as a large shipper and receiver we can't tolerate any delays in receiving or in shipping. As a, you might say as a citizen of this community, this Rivergate area has been developed by public tax money, and I personally feel that all railroads should have access to this area.

* * *

CROSS EXAMINATION

Q. (By Mr. Weisser) The Examiner has a map. It has been identified as Exhibit 37 for identification. I think to clarify the record, could you point out where your plant is being located in Rivergate? [378] A. Yes, sir. It would be at approximately No. 27.

Q. Approximately No. 27? A. Yes.

Q. Do you know where Peninsula Terminal Railroad is? A. Yes, sir.

Q. Is it your testimony, then, that you believe the unit trains will move through Peninsula Terminal Railroad to your plant? A. Eventually when—of course there would have to be an extension of track, of course.

Q. I see. You realize, of course, that there is substantial work that would have to be done in that area to fill and prepare the land, do you not? A. That is true.

Q. Do you have any idea when that might be completed? A. I am not aware of it, no.

Q. Do you know of any timetable that has been set to get the track in the Peninsula—strike that—in the River-gate Industrial area on the ground and operating? A. No, sir, I am not aware.

Q. Will your plant be served by any railroad when completed? A. Yes; by the Union Pacific.

Q. I see. And this would be through their Barnes Yard? A. Yes.

Q. And you could route your traffic via Southern Pacific, [379] thence Union Pacific to your plant? A. That is true.

Q. A unit train could be routed that way, could it not? A. It could be, but it would be uneconomical.

Q. How is that? A. We have made some preliminary investigations in this area and the Southern Pacific in informal talks have offered to docket a proposal to publish rates on iron ore in unit train load lots from the Shasta deposit as far as they can take it to Portland with their current junction with Union Pacific. Subsequent talks with Union Pacific have indicated that they would add to the cost of this transportation to the point where it is not economical at this time.

Q. With whom were you talking at Union Pacific? A. Your rate department, sir.

Q. Who specifically? A. Excuse me, I didn't personally. This was handled by the Southern Pacific on our behalf.

Q. I see. So Southern Pacific told you that Union Pacific made this representation? A. Yes, sir, and it was verified with talks with their rate people here in Portland.

Q. With whom in Portland, do you know? A. Sir, I can't—I don't have that name with me. I could get it.

[380] Q. The traffic department in Portland? A. Yes.

Q. In the rate department? A. The rate department in Portland, yes.

Q. Do you know exactly what the Union Pacific proposal was? A. In dollars and cents?

Q. Yes. A. Yes. These were, of course, informal talks and they would have to be put on a docket. They offered 23 cents per gross ton to take the iron ore in unit trains from the interchange of the S. P. to Rivergate.

Q. Other than that, there is no operating impediment that you could see to Southern Pacific giving unit trains being operated by Union Pacific out to your plant, is there? A. Only with respect that the unit train principle, as generally known, indicates it is a one haul from origin to destination, a round trip affair.

Q. Are you familiar with the run through trains that Southern Pacific and Northern Pacific operate between Seattle and Eugene? A. No, sir.

Q. Where crews are merely changed when they get into Portland and the same power is operated from one terminus to another? A. I am not aware of that, but the Union Pacific indicated they could not do that in this instance.

[381] Q. Who told you that? A. Again the same people that we were discussing the rate and operation with at that time.

Q. What was the substance of their conversation? A. The Union Pacific, because of their union agreements, would have to take their power and their crews and attach it to the train and bring it into Rivergate. This is just a matter of a short time. They would also have to pay them minimum time for their crew.

Q. The discussion we have had here as to unit trains and the problems you have run into have dealt with the southwest end of Rivergate where your plant is coming in, is that correct? A. That is correct.

Q. You indicated that the unit trainload lots of ore would be handled as soon as economically feasible. Is there some other factor in the mining of this that makes it unfeasible at this time? A. No, this was strictly transportation.

Q. Just to get this one point straight as to the effect this unit train may have on Peninsula Terminal, is it your testimony that the unit trains would operate over the existing trackage of Peninsula Terminal if they were to come out to your plant via S. P.? A. Well, whatever is necessary to get the S. P. into Rivergate. That is a technical railroad question. I am not sure [382] how that would have to be handled, but it would have to be over whatever arrangement the S. P. could make to get into Rivergate.

Mr. Weisser: That's all.

CROSS EXAMINATION

Q. (By Mr. Tjossem) I am Paul Tjossem representing the S. P. and S.

When did your company commit itself to buy this 150 acres out at Rivergate? A. I cannot answer that accurately, sir.

Q. Was it last year? A. It was within the last couple of years.

Q. At that time had you consulted with the Southern Pacific as to whether they could put a unit train into that location? A. This came after, sir.

Q. After you committed yourself to buy the plant? A. Yes.

Q. You said you were familiar with the Southern Pacific's application in this proceeding for trackage rights on the Union Pacific? A. In a general way, yes.

Q. Are you aware of the fact that those trackage rights run from East Portland through the Union Pacific Albina Yards up on the Union Pacific's track to a connection with the Peninsula Terminal Company? [383] A. Yes, sir.

Q. So if that application is granted and you were going to run a unit train, you would have to run it through Peninsula Terminal, wouldn't you? A. Apparently so.

Q. Have you any idea as to when it will be that the Peninsula Terminal trackage could ever be extended in to your plant? A. No, sir. That is a railroad problem. I am not aware of it.

Q. You have not investigated that? A. No, sir.

Q. If you could get the rate that you needed, when would you put this unit train into operation? A. That is not known at this time. We currently have a contract with the Marcona Company to bring iron ore in by water. We are still actively progressing to using our own ore from the Shasta deposit.

Q. Where is this water-borne iron ore coming from? A. From Peru.

Q. So your investment of \$35,000,000 in this plant is predicated on a source of iron ore from Peru for the present? A. That is correct.

Q. How long will that ore be available, do you know? A. I don't know that, sir.

Q. But you have made no investigation at all to determine [384] how soon or when it could be that unit trains could operate through Peninsula Terminal to your plant if the Union Pacific application was granted? A. No, sir. Our original investigation, of course, was as it is known now, S. P.—U. P. into Rivergate.

Q. What was the quotation the Southern Pacific gave you for the move from the Shasta mine up to East Portland? A. You understand this was informal talks, that they offered only to docket this on a, in a regular manner.

Q. But you had a definite quotation of 22 cents a ton from the U. P. What did the Southern Pacific give you? A. Three dollars and eighty-five cents a gross ton from Shasta to the Union Pacific interchange in Portland.

Q. Under that quotation was the S. P. going to furnish the equipment? A. Yes, sir.

Q. And furnish the transportation? A. Yes, sir.

Q. And all the terminal services at Shasta? A. Yes, sir.

Q. How many miles is it from Shasta to East Portland, do you know? A. I don't have that with me, sir.

Q. Your discussions, I take it, with the Union Pacific were also informal? [385] A. Yes, they were, and handled through the Southern Pacific because they were the ones we went to originally.

Q. But I understood that you did talk to somebody directly with the Union Pacific? A. Yes, subsequently we did talk with them.

Q. And that was in the Union Pacific rate department?

A. Yes.

Q. About when was that, do you know? A. A year ago.

Q. Did the Southern Pacific tell you they would take this iron ore clear into your plant if they could obtain the rights from the Union Pacific? A. Not at that time, because there was no mention at that time of any way of getting them into Rivergate.

Q. So the Southern Pacific didn't indicate to you that they would try to bring this ore through Peninsula Terminal? A. Not at that time, no.

* * *

[387] RICHARD B. KENNEDY

Was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Weisser) Mr. Kennedy, have you prepared a statement for this proceeding? A. Yes, sir.

Q. Your name is Richard B. Kennedy, it is not? A. Right.

Q. You are with the Morrison Oil Company? A. That is correct.

Q. You have a plant located on the Peninsula Terminal Railroad in North Portland? A. That is correct.

Q. And the statement which is attributed to you has been marked as Exhibit 34 in this case and I hand you what is a copy of that and ask you to take a look at it. Based on your examination of that statement could you tell me if that is your statement for this proceeding? A. Yes, this is my statement.

Q. Are the facts contained therein true and correct to the best of your knowledge and belief? A. That is correct.

[388] Mr. Weisser: I tender Mr. Kennedy for cross examination.

CROSS EXAMINATION

Q. (By Mr. Wilson) Mr. Kennedy, my name is Wilson, sir, with the Southern Pacific.

You indicate on Page 2 of your 34 for identification that with the ownership in Peninsula the U. P. and S. P. and S. should help develop new markets. Would you agree with me that it would be logical that those new markets would be served by Union Pacific at other portions of their line? A. Yes, I would think so.

Q. It is in their own self-interest and obviously they would attempt to get the haul direct from Peninsula Terminal direct to some point on their own lines throughout the United States, isn't that a fact? A. Well, by the nature of our business we are restricted, let's say we feel the Greater Northwest Territory, Montana, being probably the limits of our being able to compete.

Q. I was referring, of course, to the Union Pacific. You would agree with me it would be in the Union Pacific's self-interest as a railroad to develop these new markets you refer to on the Union Pacific if they could in other states so that they could move the shipment all the way from Peninsula Terminal direct by their own lines to those new markets, would you agree with that? A. Of course we work with the S. P. and S. primarily. Those [389] are the people that handle our cars and if we have any problems we go to them first and let them work it out with someone else.

Q. Well, are you able to agree with my statement? A. Well, in essence, I guess, yes.

Q. Would you agree with me that—I will withdraw that. Do you agree where the Southern Pacific Company operates, sir, their system? A. Roughly. I know they are the coast, let's say the coast-wise carrier.

Q. Yes, they run south from Portland into California and into Arizona and across New Mexico, Texas, Louisiana, all the way to New Orleans, do they not? A. To my knowledge, yes.

Q. Do you think the Union Pacific would have any great interest in developing new markets in those areas served by the Southern Pacific in Arizona, New Mexico, Texas, and Louisiana since all they would receive would be a switch movement from Peninsula Terminal to East Portland? A. I wouldn't think they would be too interested.

Q. No; I agree. Now, at the top of that Page 2, Mr. Kennedy, you indicate since the present owner of Peninsula is not permitted to continue this service, since the U. P. and S. P. and S. are in the railroad business, that is their stock and trade, they would be able to do a good job. Were you [390] aware of the fact that the contract of purchase between Peninsula Terminal and the U. P. and the S. P. and S. provides that the Peninsula Terminal management will continue to manage the Peninsula Terminal Railroad?

A. Yes, sir.

Q. You were. Do you know why they done that? A. No, sir, I do not know the reason.

Q. It would appear to you from, I take it from your statement that it would be more logical since they are in the railroad business and that is their stock and trade that they would take over the management of Peninsula Terminal themselves, isn't that what you are saying here? A. No, I wouldn't agree. Let's say maybe they might help in the matter. We would hope that the present people would stay there because we know them.

Q. Now, I understand you receive inbound shipments in your business, is that correct? A. That is correct.

Q. Some of those origins are in California, are they not? A. That is correct.

Q. And they move in Southern Pacific and thence Union Pacific into your Rivergate area or the Peninsula Terminal area? A. That is correct.

Q. You had some shipments in October of last year, did you not, in 1967, inbound shipments, one from Ravenwood, Cali- [391] fornia, a shipment of cans? A. Oh, yes, we receive regular shipments of cans from that area.

Q. Would it surprise you, sir, if I were to tell you on the 10th of October last year you had a shipment of cans that moved on the 10th of October from Ravenwood, California, routed S. P., S. P. and S., and that it took 45 hours to get from the point where Southern Pacific turns it over to the S. P. and S. to Peninsula Terminal? A. Would it surprise me that it took 45 hours?

Q. Yes, sir. A. No, because it is my understanding that it is normally three days to get an S. P. car out of Brooklyn Yard, so we are used to that, we have learned to live with that.

Q. I am not referring to that. I am referring to the 45 hours commences, is the time the S. P. turns the car over to the S. P. and S., the 45 hours begins then and ends when it is put on the interchange track at the North Portland interchange, would that surprise you? A.

Mr. Tjossem: Mr. Examiner, I want to interpose an objection in the way of clarification. I do not believe the S. P. hands cars over to the S. P. and S., I think they are handed to the S. P. and S. by the Portland Terminal Company.

Mr. Wilson: Are you objecting?

Mr. Tjossem: Yes, I am objecting because you are not [392] stating a fact.

Q. (By Mr. Wilson) Do you know how the cars are delivered? A. No, sir, that has always been a mystery to me. As I say, we work through the S. P. and S. and we

let them fight our battles. We say we have car number so and so and you are to deliver, go get it for us.

Q. Has the S. P. and S. ever told you these delays were accounted for by the S. P. and S. or is it always someone else? A. They have usually come back with an answer that they would get it as soon as they could get their hands on it.

Q. In any case, has the S. P. and S. ever told you that the delay took place on the S. P. and S.? A. I can't recall of any.

Q. In all cases it was always the other fellow hasn't given it to us, is that a correct characterization of the answers? A. I would go along with that. I would think that would be normal.

Q. Now, on the 23rd of October of last year you shipped some cans from Richmond, California, routes S. P.-U. P. to Peninsula Terminal, do you recall that, cans from Richmond? A. Yes.

Q. Would it surprise you if I were to tell you it took 37 hours from the time the Union Pacific received that car until the time it was spotted on the Peninsula Terminal interchange track? [393] A. Well, I do know this, when we ship tires out of Los Angeles we specify Western Pacific with S. P. and S. to speed up our service.

Mr. Wilson: I wonder if the reporter could read my question.

A. I know we originate it with Western Pacific.

Mr. Wilson: I would like to have my question read and receive an answer to my question if I might, Mr. Examiner.

Exam. Shoup: You may.

Please read the question.

(The record was read by the reporter as follows:

"Question: Would it surprise you if I were to tell you it took 37 hours from the time the Union

Pacific received that car until the time it was spotted on the Peninsula Terminal interchange track'')

A. I would have to answer yes, it would surprise me then.

Q. (By Mr. Wilson) And as a shipper or receiver, in this case a receiver, you would not consider that an adequate service for the distance of 5.2 miles, would you, sir? A. It does not seem that it would appear so.

Q. Did I understand you that it is your understanding that the Western Pacific serves Los Angeles, California?

A. We have routed tires, in other words, they come the inland route rather than—

Q. They come the Bieber route? [394] A. I am not too familiar with that. I know it is about four carriers.

Q. But you don't believe that the Western Pacific serves Los Angeles, do you, sir, or do you know? A. It originates with another carrier but Western Pacific brings it up.

Q. Who brings it into Portland on that route? A. S. P. and S.

Q. And who would bring it or move it before S. P. and S. got it between the Western Pacific and S. P. and S., do you know? A. Is it the Oregon Trunk?

Q. I am just asking you if you know. If you don't know, say you don't know. A. Well, I can look at the routing sheets.

Q. But you are not able to tell me now? A. No.

Q. O. K. Just one last question, Mr. Kennedy. Can you explain to me how you believe the Peninsula Terminal will be strengthened by virtue of U. P. and S. P. and S. ownership? A. Well, I think I indicate we are perfectly satisfied with the services of Peninsula at the present time but if they are desirous of making a change, which they evidently are, we feel because of our being able to work with S. P. and S., which we have for many years, that we would prefer them to be in the ownership.

[395] Q. Actually Peninsula Terminal has really performed extremely well on the time that it takes from the time a car is spotted on the North Portland interchange until the time they deliver it to your plant or other plants on the Peninsula Terminal, isn't that true. A. Yes, sir.

Q. Actually the service could hardly be improved upon as far as a shipper or receiver on Peninsula is concerned, isn't that true? A. I would say so.

Q. Now, how close is your plant to the Rivergate area, sir? A. Well, we, I would think, are the outskirts of the Rivergate area.

Q. In other words, Peninsula Terminal runs right up to the Rivergate area, does it not, sir? A. To my knowledge, that is correct.

Q. If you were a shipper in the Rivergate area, don't you believe that all the railroads serving Portland should have direct access to the Rivergate area? A. Well, I am not a railroad man primarily, however, in our business, the less number of people you have to go through the faster you get the action done.

Q. Yes, I agree with you. So all the Southern Pacific had direct access to Peninsula Terminal there would be one less person that that traffic would have to go through, isn't that [296] true? A. It would appear so to my mind—but they don't, unfortunately, have terminals in there and I don't think they are going to parallel routes in there.

Q. You understand that is just why what we are asking for here is the right to operate over the Union Pacific trackage to get that direct access and eliminate that extra person that we have to work through, do you understand that in this proceeding? A. Well, yes, sir.

Mr. Willson: Thank you. That's all I have.

CROSS EXAMINATION

Q. (By Mr. Ploeger) I am Warren Ploeger with the Milwaukee Railroad.

This operation you have at Morrison Oil, do you warehouse on behalf of others the oil in packages? A. No, sir, we don't. We package for other people.

Q. You don't own the oil or the brake fluid or— A. (Interrupting) Oh, yes.

Q. Are you a custom packager? A. That is correct.

Q. Do you buy the materials and then package it and sell it or do you store it? A. We do it both ways.

Q. Do they buy the oil and turn it over to you and you package [397] it and then they sell it? A. As I say, we can go either way. We own some products and sell it or we use or will receive their product, package it for them.

Q. What product do you in particular buy and sell? A. Motor oils, antifreezes, brake fluids.

Q. All of it? A. Right.

Q. What of these commodities do you package on behalf of others? A. By that do you mean someone else's product where we do not take title to it?

Q. Yes. A. Antifreeze and motor oils.

Q. Is that the bulk of your business, rail shipment-wise? A. Right, sir.

Q. So that on that traffic that you store, warehouse, and package for others, do they direct the routing both on inbound and outbound traffic, do they not? A. Normally on the inbound they do; on the outbound it is very often left up to us.

Q. They might leave it to your judgment but they have the right to tell you how to do it? A. They do have that right.

Q. I take it on your outbound commodities most of it moves [398] out into the Northwest territory by truck, is that correct? A. A considerable portion, but there are some rail movements out, particularly into Washington and Montana.

Q. Primarily into the Butte, Missoula, and Billings area in Montana? A. That is correct.

Q. Do you have dealers or distributors there that you ship to? A. That is correct.

Q. They may be dealers, distributors of your customers or yours, which are they? A. They are our customers.

Q. So they direct the routings to those points? A. That's right.

Q. Do you know that if the Northern Lines are merged into one system, including the S. P. and S., that under the conditions imposed by the Commission in that merger that the Milwaukee would be granted trackage rights to Portland over the S. P. and S. track? Did you know that? A. I have read it, read that.

Q. Did you know that it would be possible for you to ship direct Milwaukee from Portland to Billings and Butte and Missoula and other places in Montana such as Great Falls if the Milwaukee is in Portland? A. I hadn't realized that but I would assume it to be true.

[399] Q. If this event comes to pass, would it be probable that you might recommend routing that way from time to time, if the service was equal? A. Well, we are a small company and we do not have a traffic manager, so I go back to my original statement that we normally pick the S. P. and S. to handle our traffic problems for us.

Q. However, on that traffic which your customers may route they may wish to route it that way, is that true? A. Oh, that's true

.Q. Is it your understanding, however, that even though the Milwaukee will be running right past your door with their trains that they will not be able to serve the Rivergate or the Peninsula Terminal Company except in the same way they do now or to the same extent they do now unless their application in this proceeding is granted? A. Yes.

Mr. Ploeger: I don't think I have any more questions. Thank you.

Exam. Shoup: Any further questions of this witness?

Mr. Weisser: I had one question if it is proper for redirect now, Mr. Examiner.

REDIRECT EXAMINATION

Q. (By Mr. Weisser) Would you want Southern Pacific to be operating over Peninsula tracks to do switching along with [400] Peninsula to your plant? A. Would you repeat that?

Q. Would you want the service of Southern Pacific switching over the trackage of Peninsula Terminal to your plant along with Peninsula Terminal doing the same service?

Mr. Wilson: I will object to the question. That is not the relief that Southern Pacific has asked for in its application.

Exam. Shoup: Overruled. The Examiner is going to allow that question.

Mr. Weisser: Well, if counsel—well, I will let the question stand.

Exam. Shoup: Would you please answer the question.

A. I would think it would be a needless duplication. I think Peninsula could do the switching.

Mr. Weisser: I believe that's all the redirect.

Exam. Shoup: Are there further questions of this witness?

RECROSS EXAMINATION

Q. (By Mr. Wilson) Did the Union Pacific tell you that the Southern Pacific intended to operate its trains and do switching over the Peninsula Terminal Company tracks?

A. No, sir.

Q. In other words, you don't know whether that is intended or not? A. No, sir.

[401] MAYNARD COCHRAN
was sworn and testified as follows.

DIRECT EXAMINATION

Q. (By Mr. Weisser) You have been sworn, Mr. Cochran? A. Yes, sir.

Q. Could you state your name? A. Maynard Cochran. I own a small manufacturing plant out in North Portland on the Peninsula Railroad, about two and a half years.

Q. There has been a statement marked as Exhibit 32 in this proceeding. I will hand you what is a copy of it and ask you to take a look at it. Is that a copy of your statement in this case? [402] A. Yes.

Q. Are the facts contained therein true and correct to the best of your knowledge and belief? A. To the best of my knowledge, yes.

Mr. Weisser: I tender Mr. Cochran for cross examination.

CROSS EXAMINATION

Q. (By Mr. Wilson) Mr. Cochran, my name is Wilson, with the Southern Pacific.

Am I correct from reading your prepared testimony, Mr. Cochran, that you do not ship over the Southern Pacific at the present time? A. I have on a piggy-back basis only.

Q. Is that inbound or outbound? A. Outbound.

Q. What destination are you shipping to? A. That goes to Los Angeles.

Q. And on Page 2 of your prepared testimony you indicate in about the third line that since you rely on the U. P. and the S. P. and S. for your line haul that you believe ownership of the switching carrier will insure continued good service. Is the good service that you refer to the service of the Peninsula Terminal Company? A. Well, yes, that and especially the S. P. and S. because we have been doing business with them for a long, long time.

Q. Well, that is what I want to make sure so we are talking [403] about the same thing. The Peninsula Terminal, as you know, is the small railroad that goes just to the North Portland interchange and there it is turned over to the S. P. and S. or U. P.? A. Yes.

Q. Now, the service you refer to in your statement here is the service of the Peninsula Terminal itself in picking the cars up at your plant and moving them to the North Portland interchange or in the reverse direction, is that correct? A. Yes, I think that would be correct.

Q. And you did not intend to refer to the service between the North Portland interchange and, let us say, Albina Yard or any other point on the Union Pacific? A. No.

Mr. Wilson: I think that's all I have. Thank you, sir.

Mr. Ploeger: Mr. Examiner, I thought I might ask him a question.

CROSS EXAMINATION

Q. (By Mr. Ploeger) I am Warren Ploeger with the Milwaukee Railroad.

I want to ask you what you meant when you say, on Page 1, "can foresee no need for an expansion of any of these routes." What did you have in mind when you said that? A. Well, every place I am shipping it is adequate right the way it is.

[404] Q. What expansion did you have in mind, then? A. Expansion of our own plant.

Q. What did you mean by expansion of these routes? A. No, I am talking about expansion of my own plant. We will have more cars later on.

Q. Do you want to change that testimony, then, I can foresee no need for expansion of my plant, is that what you mean to say? A. Well, we are going to expand our plant but we will stay with the same customers we have.

Q. Same customers? A. Yes, over the same routes.

Q. What I am asking you now, what do you mean by I see no need for expansion of any of these routes? A. Well, as far as I am concerned, I don't see any need for any more expansion. That is strictly personal.

Q. Is that personal or on behalf of your company? A. On behalf of my company.

Q. I am still trying to find out from you what you mean and why it is in here. What purpose are you trying to say this for, that is what I am trying to get at? A. Well, as far as my company is concerned, I don't see any need for any expansion as far—

Q. (Interrupting) Expansion of what, that is what I am trying to find out. [405] A. Of any more railroads.

Q. Is anybody proposing any railroad operation on Peninsula Terminal that you know of, in addition to the Peninsula Terminal Company? A. Only what I read in the papers.

Q. What do you read in the papers? A. Oh, I couldn't tell you, just everything there is in there, but I understand they all want to get in there.

Q. All railroads want to own it, is that what you understand? A. I don't know whether they want to own it but they want to be able to operate over it.

Q. Is that your understanding? A. That was my understanding.

Q. Who told you that? A. I believe that is what I read in the papers.

Q. That is what you read in the papers? A. I think so, sir.

Q. And that is what you are talking about, you don't think there is any need for any railroads to operate over the Peninsula Terminal Company in addition to the Peninsula Terminal Company, is that what you are trying to say there? A. That is what I am trying to say.

* * *

[406]

A. W. KILBORN

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Young) Would you please state your full name and spell your last name? A. A. W. Kilborn, Ki-l-b-o-r-n.

Mr. Weisser: Mr. Examiner, before we get into the Southern Pacific case, there is apparently some misunderstanding as to what Southern Pacific is asking for in their application in the first finance

docket No. 24890, and it has been our interpretation that in their request for common use of terminal facilities of Peninsula Terminal that meant they actually wanted to run power on that track.

Is that a correct interpretation?

[407] Mr. Devers: Perhaps, Mr. Examiner, if I may, Mr. Weisser, we and the record should have an explanation from counsel for Southern Pacific at this time in view of cross examination questions which have been objected to and which will appear again, an explanation of language which appears in Paragraph 4 on Page 3 of their application in Finance Docket 24890. The last sentence of that paragraph, and this has been read before in these proceedings, reads this way: "Southern Pacific desires to participate in promotion of the industrial development of the important areas served by Peninsula Terminal Company and has concluded that this objective can best be accomplished through an order permitting its common use of Peninsula Terminal Company."

Now, consistent with that paragraph, as we understand it, Southern Pacific has prayed for the following relief from the Commission: One, on Page 5, the common use of Peninsula Terminal Company together with bridge trackage rights over Union Pacific between Peninsula Terminal Company and the Southern Pacific, Union Pacific connection at East Portland, Oregon. Now, if that does not mean that Southern Pacific is here seeking the right to operate over the line of Peninsula Terminal Company, then we think the record should be clarified.

Mr. Wilson: Do you wish me to reply, Mr. Examiner?

Exam. Shoup: Yes, sir, Mr. Wilson.

[408] Mr. Wilson: I think perhaps counsel's problem is that he hasn't read the cases under Section 3(5) of the Interstate Commerce Act. I honestly do not believe that this is the place for me to attempt to state the legal basis for Section 3(5) relief. I think that is a matter for brief. However, I have objected and will state on the record that Southern Pacific in its application has not asked for the right to physically operate over the Peninsula Terminal. There is nothing in the application, as I see them, that sets that forth. If there is any misunderstanding about it I think it should be clarified and it is, I think, clear now what is meant by common use of terminal facilities is a legal connotation which I think you will find is well defined in the cases under Section 3(5) of the Interstate Commerce Act.

Mr. Tjossem: Mr. Wilson, may I point out you don't say that. You say an order permitting us common use of Peninsula Terminal Company.

Mr. Wilson: On what page is this?

Mr. Tjossem: Paragraph 4 on Page 3. Now, if you have got the common use of a company, it seems to me you can go out there and use that company in common with other companies.

Mr. Wilson: I think I have made my position very clear on the record. I don't think it can be any clearer. As I say, if you want to argue on brief you are entitled to argue whatever you want about Section 3(5). I will be glad to set [409] forth my views in the brief as to what Section 3(5) relief is or is not. I have, I think, made it quite clear.

Mr. Tjossem: Mr. Examiner, I do not believe that this is a matter of brief. I think the parties are entitled to know what the Southern Pacific is seeking.

Mr. Wilson: I have just finished telling you, how can I make it any clearer?

Exam. Shoup: Counsel has indicated orally here what S. P. seeks in this 24890 finance application.

Mr. Tjossem: That does not include the right to use the tracks of Peninsula Terminal.

Mr. Wilson: That is exactly what I said, sir. It seeks direct access to reach the terminal facilities.

Exam. Shoup: Mr. Wilson has indicated that Southern Pacific has not asked for the right to physically operate over the facilities of Peninsula Terminal, is that correct?

Mr. Wilson: That is correct. We have asked that Southern Pacific be granted the common use of those facilities and the right to get up there on the main line trackage pursuant to Section 3(5) of the Interstate Commerce Act.

Mr. Devers: And the common use of those facilities is not limited to Peninsula Terminal ownership in North Portland.

Mr. Wilson: All I can suggest is that you read the Interstate Commerce Act and read the cases. That is all I can suggest.

[410] Mr. Devers: I guess I haven't read all the cases.

Mr. Wilson: I think it is clear.

Mr. Tjossem: I think it is clear enough now.

Exam. Shoup: Mr. Devers mentioned something about the interchange track, what was that point?

Mr. Devers: Well, I asked him but he referred me again to the Act and the cases that have been decided under the Act. I asked him whether his use of the term "Facilities of Peninsula Terminal" in the pleadings we have just had reference to referred only to Peninsula Terminal's ownership interest in the interchange tracks.

Mr. Wilson: Mr. Examiner, I think the record is quite clear here from applicant's exhibits, from the application, that Peninsula Terminal does not own any tracks outright on the interchange. They are owned jointly by Peninsula and other railroads.

Mr. Devers: I said Peninsula Terminal's interest in the interchange.

Mr. Wilson: We are seeking equal ownership. It is quite clear to me that we have two separate applications under Section 3(5) and we have one petition for inclusion under Section 5(2)(d) of the Interstate Commerce Act. Those are the petitions and application that Southern Pacific has filed in this proceeding. I think they are quite clear and speak for themselves.

[411] Exam. Shoup: You are then seeking an interest in the interchange tracks, are you not?

Mr. Wilson: We are seeking a right to have direct access to Peninsula Terminals, sir, and equal ownership in the stock of Peninsula Terminal.

Exam. Shoup: Is that sufficient, counsel?

Mr. Devers: I guess it is going to have to be, Mr. Examiner.

* * *

Q. (By Mr. Young) Mr. Kilborn, will you explain in what capacity you serve Southern Pacific Company? A. I am the division superintendent of the Oregon Division of Southern Pacific which goes down into northern California and over towards, into Flannigan, Nevada, in operating and maintenance.

* * *

[412] Q. (By Mr. Young) Now would you just designate, please, referring to the map and describing it orally,

if you can, how railroad cars move from Brooklyn Yard by way of U. P. to Peninsula Terminal Company? [413]

A. A car destined for a point on the Peninsula Terminal Railroad arriving at Brooklyn would be in a group of cars to be interchanged to the Union Pacific Railroad at Albina Yard. These cars would be moved in this group of cars by a Southern Pacific engine via the S. P. track, the blue track, to a point at East Portland which is the designated point of interchange insofar as time is concerned for the receipt of those cars by the Union Pacific.

Q. And on the map that is where the blue track joins with the red track, is that correct? A. That is correct.

Mr. Delisi: I am not sure I heard you. Albina is the designated point of interchange?

Mr. Young: No, East Portland.

A. (Continuing) The same crews and cars would continue their movement, however, on the red track and be brought to rest in Albina Yard where they would be left for the Union Pacific to handle. Then the Union Pacific Railroad would move that car from their Albina Yard to the interchange of the Peninsula Terminal Railroad at North Portland.

Q. (By Mr. Young) Now, that's the way the cars are presently moving from Brooklyn to Peninsular? A. Via the Union Pacific, yes.

Q. If this application of Southern Pacific is granted will the cars continue to move over the same physical track? [414] A. Yes, if this application is granted they would move over the same route.

Q. Now, is there another way cars can move from Brooklyn out to Peninsula? A. Another method in which this can be done is cars arriving at Brooklyn Yard would be in a group or block of cars for the S. P. and S. Railroad. They would be moved via Southern Pacific crew

over the blue line down to where the intersection of the blue and the red line meet and from there they would cross the what is shown on the map as the steel bridge and would be moved into the what we call the depot yard of the Portland Terminal Railroad. They would be brought to rest on one of those tracks by this Southern Pacific crew. Then the Portland Terminal Railroad crew would move these cars to an interchange with the S. P. and S. which would normally be in their Hoyt Street Yard. From there the S. P. and S. would handle them to the interchange of the Peninsula Terminal Railroad at North Portland.

[415] Q. Now, you stated at the present time S. P. trains and crews presently operate from East Portland to Albina?

A. Yes, this is correct. The Southern Pacific crews do this as an agent for the Union Pacific in handling this traffic from East Portland to the Albina Yard.

Q. Has this arrangement been in effect 40, 45 years?

A. This arrangement has been in effect, as I recall, since 1922.

Q. And has the arrangement been satisfactory to S. P. and U. P. also, so far as you know? [416] A. Yes, satisfactory.

Q. Are S. P. employees familiar with the Union Pacific operating rules? A. Yes, they operate under the Union Pacific rules from East Portland to Albina and return now, so they are all well familiar with those rules.

[419] Q. Mr. Kilborn, as an operating railroad official, in your opinion, could this movement be made over this U. P. segment of track without undue interference to Union Pacific operations? A. Oh, I don't see any problem at

all in that. I have spent some time out around there. I was visiting with a towerman out at North Portland. He told me it took about 15 minutes [420] for a—

Mr. Weisser (interrupting): I will object to this as hearsay.

Exam. Shoup: Sustained.

Q. (By Mr. Young) You will have to testify from your own knowledge and not what the towerman told you. A. Well, I didn't see any trains and I was out there about an hour.

[423]

CROSS EXAMINATION

Q. (By Mr. Weisser) Mr. Kilborn, you indicated that cars are presently interchanged between Southern Pacific and Union Pacific at the Albina Yard in groups. Are these cars presorted by Southern Pacific before they are handled by Union Pacific? A. No.

Q. Then before Union Pacific moves the cars out to North Portland they have to get the cars out of the cut that belong to North Portland, is that correct? A. If they are not on the head end, yes, sir.

[425] Q. Now, as I understand it, then, you plan under your proposal, if granted, to run one train out and one train back every evening, is that it? A. I didn't say exactly when we would run them. We would run them consistent with the requirements of the service for the Peninsula Terminal shippers.

Q. At the present time I believe Southern Pacific is handling [426] less than 500 cars a year to Peninsula Terminal. I believe this was the testimony of Mr. Lawrence. What type of service would you need to handle those cars, one every other day? A. Oh, no. We would have to furnish daily service.

Q. You would run out there whether you had any traffic or not? A. Well, if there was a car to get we would go over and get it, and if there was one to take over we would take it over.

Q. And this is the level of traffic you could expect at Peninsula Terminal as exists today? A. We are expecting a lot more traffic—

Q. (Interrupting) Wait a minute, as it exists today. A. Yes, but we are expecting a lot of traffic.

Q. And this is the level of traffic you had last year, around 490 cars? A. If this would be introduced as an exhibit, this would be it. I don't have those figures myself.

Q. Some of those cars could be routed over the Portland Terminal S. P. and S. connection, could they not? A. Well, I wouldn't say any car we would handle would ever be routed over any other railroad to get to Southern Pacific if we operated out there.

Q. Well, if the traffic has that route available today, I don't believe it has been testified to in this record, but some of those 490 cars that you handled last year to North [427] Portland, that were handled for you to North Portland, went S. P. and S., did they not? A. There were some that must have gone S. P. and S., yes, sir.

Q. So if Southern Pacific were to offer this service to North Portland as outlined, would they then have to sort Portland, North Portland cars from their cuts of cars? A. Yes, they would arrive from Eugene in blocks of cars destined for Brooklyn Yard and at Brooklyn Yard we would quickly switch them out and then run this train over to make the proper connection with the North Portland Railroad, Terminal Railroad.

Q. So basically the same functions that the Union Pacific is performing now would be performed in Eugene? A. No.

Q. I mean as far as sorting the cars, is that right? A. No, it would be done in Brooklyn.

Q. Well, then, the cars coming from Eugene would be as mixed up when they get to Brooklyn as when you now take them up to Albina, would they not? A. I don't know for sure, they may not be.

Q. I see, O. K. Do you expect any labor complications if your proposal is granted? A. No.

Q. On the return move from North Portland to Brooklyn would the cars be sorted for Brooklyn to their destinations or [428] would they go further down your line? A. Are you saying when they return?

Q. Yes, on an outbound move from North Portland. A. Generally cars arriving at Brooklyn going south from Brooklyn, unless they are destined for some point north of Albina, Oregon, we take them all to Eugene in a milk run train and then we put them over our computerized classification yard there and switch them into the trains that are going to the various destinations, Texas or Arizona, Los Angeles, San Francisco, so we put them together in blocks and run them in solid trains to Eugene.

Mr. Weisser: I believe that's all the cross examination.

CROSS EXAMINATION

Q. (By Mr. Tjossem) Mr. Kilborn, I gather from your testimony that all of the Southern Pacific trains terminating or originating in the Portland area are made up and broken up at Eugene, is that right? A. Generally cars terminating in the Portland metropolitan area are put over our classification yard at Eugene and made into solid blocks of cars. As I said, for example, solid block of cars for the S. P. and S., solid block of cars for the Union Pacific or for Brooklyn proper or for Pasco, Washington, Chahalis, Washington, or Seattle via the N. P., we make these blocks and when these trains appear—

[429] Q. (Interrupting) The answer to my question is yes, isn't it? A. Yes.

Q. That's what I thought. How far is it from Eugene to Brooklyn? A. About 125 miles.

[436] Q. (By Mr. Watson) My name is Homer Watson and I represent the Brotherhood of Locomotive Engineers on every railroad in the State of Oregon, that is, first-class railroads.

Mr. Kilborn, I would like to go back to Mr. Baker's testimony yesterday in which I am sure you were here and heard him testify that the operations of the Union Pacific Railroad from the north end of Albina Yard to North Portland or the Peninsula Terminal interchange point and the movements in there were at times heavy and they had experienced considerable congestion. Now, you just testified in the last few minutes to the Union Pacific counsel that you felt your movements from the north end of Albina Yard through North Portland junction or the Peninsula Terminal interchange tracks would not further congest this area. How do you arrive at this? A. I don't think I testified that it would not further congest [437] the area. I respect Mr. Baker's opinion on traffic congestion and what I said, as I recall, was that our movements could be made over this same piece of track because I didn't think it was that congested.

[438] Q. (By Mr. Watson) Mr. Kilborn, you also testified and it wasn't clear to me as to the place where you indicated in a tower that you were observing the amount of traffic flow over this piece of bridge trackage that you are interested in. Could you for the record indicate where this tower is [439] located? A. Yes, it is at North Portland right at the junction of the Peninsula Terminal Railroad was the tower I was speaking of.

Q. Well, this wasn't clear in my mind as to whether it was at that end of the area in which we are discussing or it was at the south end near the steel bridge tower. In your observations from this tower there seemed to be very little congestion or was there quite a few trains moving in this area? A. Well, I only spent about an hour out there one day to look at the interchange and there were no trains at that time that happened to use the interchange. This may have been unusual.

* * *

[445] F. WASCOE
was sworn and testified as follows:

* * *

DIRECT EXAMINATION

Q. (By Mr. Wilson) Will you state your full name and business address for the record? A. My name is F. Wascoe. My business address is 65 Market Street, San Francisco, California, 94105.

Q. By whom are you employed, Mr. Wascoe? A. By the Southern Pacific Company.

Q. What is your position with Southern Pacific? A. I am manager of the bureau of transportation research.

* * *

[498] Q. Then I will ask you, did you take into account in setting up your future operation that there might be a change in this furnishing of empty cars if you got direct access to Peninsula Terminal? A. No, I didn't. I had no way of predicting what might occur.

Q. Don't you believe that that direct access might cause you to [499] furnish empty cars where you are not furnishing them today? A. I don't see why not. I think we are supplying cars as requested to the extent and ability we have to supply them. I don't really see any reason why direct access would change the situation as far as empty car supply is concerned.

* * *

O. G. LINDE

[514]

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wilson) Would you please state your name and business address for the record, Mr. Linde. A. My name is O. G. Linde, 65 Market Street, San Francisco.

Q. By whom are you employed, sir? A. Southern Pacific Company.

Q. What is your position with Southern Pacific Company? A. Manager of industrial development.

Q. Now, if the Southern Pacific has the right to connect directly with the Peninsula Terminal Railroad, would the Southern [515] Pacific under those circumstances attempt to locate industry in the Rivergate area? A. Yes, it would.

Q. Would you state why that would be so? A. The Rivergate Industrial area is unique in many ways. First, here we have an area in the close proximity of a metropolitan area which contains several thousand acres of industrial property uniquely located on deep water and in addition it is publically owned. We feel that the success of such a large industrial development will largely depend upon the flexibility which is given as far as rail service is concerned. I think we must recognize here that some of the major markets served, to be served by the industrial production and industrial growth of the Rivergate area will be in California and the Southwest areas which are served by the Southern Pacific lines. Therefore, we feel that the success of the area, the Rivergate area will be largely dependent upon S. P. service being given.

Q. Now, if the Southern Pacific does not have direct access to the Peninsula Terminal would that same incentive

be present for the locating of industries in the Rivergate area by Southern Pacific? A. No, it would not.

Q. Would you explain why not? A. Well, the basic one is that by having direct service to [516] the Rivergate area we know what kind of service we can give to the industries, we can assure them of a specific service and the service they need by not having that access obviously we can not assure them of that service and we would not feel as strongly about locating industries there.

Mr. Wilson: You may cross examine.

CROSS EXAMINATION

Q. Were you present when Mr. Sandell testified a day or two ago? A. I was not.

Q. He indicated that you were instrumental in locating the Collier Carbon and Chemical plant in the Rivergate area, is this true?

A. We have worked with several industries who are presently located in that area.

Q. What do you mean worked with? A. Well, we have industries, most industries we deal with often [517] come directly to us in seeking plantsites. Based upon the criteria which they outline to us we try to find them a site. Obviously when they describe the Portland area the Rivergate Industrial has been one of the sites which—

Q. (Interrupting) Which you take people out and show? A. No, we have not.

Q. And you did inform Mr. Sandell of the Carbon Chemical plant [518] of the site at Rivergate? A. There is no industry I know of who would have to be informed about the presence of the Rivergate Industrial. All of those with whom we have dealt in the Portland area are already aware of it, and it always becomes a matter of discussion.

CROSS EXAMINATION

Q. (By Mr. Tjossen) Mr. Linde, you say you have never taken industry out there, have you been out there yourself and looked over the Rivergate area? A. Yes, sir.

Q. Have you any idea as to when that development is going to be completed?

A. By completed I presume you mean when it is filled with industries?

Q. Yes. A. I would say we are looking towards at least twenty years plus.

Q. What is the present condition of most of that area out there, does it need filling? A. A lot of it does need filling, yes indeed.

Q. And there would be filling to a considerable depth wouldn't [519] there? It would be pretty heavy filling? A. In certain parts.

E. C. ORDWAY

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Young) Would you please state your full name and spell your last name, Mr. Ordway. A. E. C. Ordway, O-r-d-w-a-y.

Q. By whom are you employed? A. Southern Pacific Company.

Q. In what capacity do you serve Southern Pacific Company? A. Traffic manager in the northern territory.

Q. What is the northern territory? A. That includes the area north of the California line including states of Oregon, Washington, western half of Idaho, and Montana, all of western Canada, and Alaska.

[527]

CROSS EXAMINATION

Q. (By Mr. Weisser) Let's talk about the switching charges on the Monarch Shingle move to Crestwell, Oregon.

A. Yes.

Q. Was this the Peninsula Terminal switch charge that was passed onto Monarch, is that your testimony? A. It is a charge that covers the switching service from the industry to connection with the Southern Pacific Company at East Portland.

Q. Is it the Peninsula Terminal switch charge? [528]

A. It is a charge that is established, it is carried in the Union Pacific tariff and is named—I am not a tariff expert, I haven't got the tariff here, and I couldn't give you a clear explanation on it.

Q. I assume you have the details on the charge? A. I have the amount, yes.

Q. What is the amount? A. If I can get my notes here to refer to. It was \$32.29.

Q. And that covered what service? A. Service from the time we delivered it to the Union Pacific until it was spotted on the industry.

Q. To industry? A. Or from the industry, it was from the industry to the S. P.

Q. Which way did the move go? A. The movement was outbound. The Industry loaded a carload of shingles to a destination on our line. It was outbound. This covered the service from the time it was pulled from that industry until it reached Southern Pacific.

Q. So it would include the Peninsula Terminal switch charge? A. I believe it would.

Q. That is your testimony, isn't it? A. That is right.

Q. And the Southern Pacific did not absorb that switch charge because it was a noncompetitive point, is that your testimony? A. We may not have any way even if it had

been competitive, [529] we may not have, depending on whether our revenue was sufficient to permit the absorption of it.

Q. Well, I think in your testimony just previously to mentioning this Monarch Shingle move you said there are noncompetitive moves on which there is a switch charge, but you would establish an absorption of the switch charge if you had direct access to Peninsula, is that correct? A. I said we would apply our rates there.

Q. The effect of that is absorption of all switch charges, is it not? A. We had in mind one-line movement out there. Southern Pacific actually getting out there and connecting with the industry, then our rates would apply. We would be part owner of the Peninsula Terminal Company and our rates would apply.

Q. So you are unwilling to do that under the present circumstances, is that correct? A. Well, I would have to make a study of that. I am not prepared to say that.

Q. You are not prepared to say you would not absorb these switch charges? A. I would have to take a look at the cost factors.

Q. Isn't it true, Mr. Ordway, any time a move develops of any substance at all you are willing to absorb all switch charges to Peninsula Terminal? A. Any kind of a movement?

[530] Q. Well, when there is any substance to it at all and someone comes in and says, "Mr. Ordway, I am going to expect to be moving between these points for the next few years, I want to have some rates set up so these movements can take place," you do in those cases make concession and absorb the switch charge, do you not? A. It depends on the circumstances. We have in some cases done this. Other cases where the revenue does not justify it we don't.

Q. There may be an isolated move here and there where a switch charge may be assessed, but this is not the general practice on your railroad in serving Peninsula Terminal, is it? A. Based upon the—in Oregon from noncompetitive points in Oregon where the rates are relatively low in revenue, it is our practice not to absorb the switching charges from noncompetitive points outside of the state of Oregon we have a provision absorbing the switching charges in all cases.

Q. Is there a breaking point in the revenue factor? A. No, it is a geographical factor at the present time, but this was based primarily upon the fact that the distance, we had to have a breaking point some place. We broke it at the Oregon line.

[533] Q. Now, you have indicated you received complaints on delays in handling cars between, I believe you said Albina and North Portland, and S. P. & S. and North Portland. How many complaints did you receive in 1967?

A. We never counted them. We never kept a record of the number.

Q. One? A. Oh, no, it is more than one because there is more than one shipper involved. Our problem has been the difficulty getting [534] business for our railroad out there because of the complaints.

Q. Let me ask you this, did you contact anybody in Union Pacific to bring this to their attention? A. Over the years—

Q. (Interrupting) Well, did you when you received this one or more complaint last year? A. No, not at that immediate time.

Q. I see. Why didn't you do that? A. We have—matters of service, delays with the Union Pacific have been handled by our operating people, Mr. Kilborn—

Q. (Interrupting) So you wouldn't get into that, would you? A. No, that is something I turn over to the operating superintendent.

Q. And you don't know whether he handled it with Mr. Baker? A. He has told me he handled it with Union Pacific, I don't know if it was with Mr. Baker or not.

Q. Do you receive any complaints on your service in this area? A. We are like any other railroad, we occasionally have some, but we endeavor, and in many cases correct those service failures improving the time.

Q. And this is common with all railroads that occasionally there are service failures they are always endeavoring to correct service, is that not correct? A. That is correct.

Q. Now, Exhibit 45, and the numbers showing cars tendered to [535] either S. P. & S. or Union Pacific, is it your testimony that whenever a car is brought into Brooklyn Yard that it will immediately be taken out to Peninsula Terminal? A. You mean in connection with our plan to run through service out there?

Q. Yes, if you have running rights out there. A. Mr. Kilborn discussed that matter. He said he would establish the service that was—to run out there that was needed in order to provide service desired by the shippers.

Q. Could you answer the question, please.

Mr. Weisser: Could you read the question, please.

(Question read.)

A. No, that is not my testimony, not immediately.

Q. (By Mr. Weisser) In other words, cars will be accumulated and taken out the same way Union Pacific accumulates cars? A. Not that same way. We would have a scheduled time for going out there.

Q. I see. A. The cars that have been accumulated since the last move out there would move out at that time.

Q. In other words, cars would either have to be sorted at Brooklyn or some other point on Southern Pacific and put into blocks before they could be taken out to Peninsula Terminal if you were granted through service? A. When we went out there we would have cars just for the Peninsula Terminal Railroad or whatever it served. These cars would either, this again is in Mr. Kilborn's jurisdiction not mine, and I am not just clear how he would handle that.

Q. Your company now furnishes empty equipment to Peninsula Terminal industries? A. In most cases we do.

Q. In fact, you give specialized equipment out there to shippers, do you not? A. Yes.

Q. Upon requests such as Crown Zellerbach's pole yard and D. F. Carr requirements for the Flex-Pac? A. That's correct.

. . .

[537] Q. This is what I am getting at, when trains arrive at Brooklyn they are not immediately spotted to the industry, they are accumulated for your train schedules that go out to these various industries, are they not? A. Yes, they are.

Q. This is much in the same way Union Pacific operates out of Peninsula Terminal, is it not? A. The time difference is considerable.

Q. But the operation is the same? A. It could be, I am not familiar with their operation.

. . .

[538]

CROSS EXAMINATION

Q. (By Mr. Tjossen) Mr. Ordway, just to make it clear on the record, do you mean to indicate the situation out here at Peninsula Terminal is unique to the assessment of switch charges to those industries? A. No, I don't think it is unique at all.

Q. You have quite a large area here in Portland that is served exclusively by the Southern Pacific, don't you, industries that are serviced exclusively by your company? A. Yes.

Q. With respect to those industries do you not require them to pay or do they not have to pay a noncompetitive switch charge where you are handling traffic, switching traffic for another line going to a noncompetitive point? A. I am not clear on your question there, give me an example.

Q. Well, let's take an exclusive Southern Pacific industry served by your company alone. A. In Oregon?

Q. In the Portland Terminal District. A. The Portland Terminal District?

Q. Well, in the Portland area we will say. A. You mean outside; this could be outside the switching limits?

Q. Or within the switching limits. [539] A. An industry within the switching limits within Portland.

Q. Exclusively and we will say it is going to a Great Northern noncompetitive point. Wouldn't you require that industry to pay a noncompetitive switch charge? A. This is up to the Great Northern Railway whether they want to absorb that or not. This is their privilege.

Q. I see, but if the Great Northern elects not to absorb the industry would have to pay? A. Yes.

Q. And it is the general practice of all carriers in this terminal to not absorb the switch charge on noncompetitive traffic? A. Yes.

Q. And your company does the same thing? A. That's correct.

Q. Are you familiar with Mr. Wascoe's Exhibits 42, and 43, and 44? A. No, I haven't even seen them.

Mr. Tjossen: I wonder if counsel would furnish you with a copy.

Q. (By Mr. Tjossen) As I understand it, if Southern Pacific has direct access to Peninsula Terminal you propose to extend your Portland rates to that area. A. That is right.

Q. As I would understand his Exhibit 42 he shows from the [540] sample that he collected that on the average, the weighted average, your company if it was going to absorb the present switching charges would have to absorb \$44.27 per car, is that the way you understand his Exhibit 42?

Mr. Young: I object to this. I don't think it matters how Mr. Ordway understands Mr. Wascoe's exhibit, I just don't think that is a proper question. Mr. Tjossen.

Mr. Tjossen: I am laying a foundation. Mr. Examiner.

Exam. Shoup: Overruled.

A. Let's have that question again.

Q. (By Mr. Tjossen) I just asked you if you understood Mr. Wascoe's Exhibit 42 that if you were going to absorb the present switching charges that the weighted average of those charges would be \$44.27 per car? A. That is not the present switching charge.

Q. What is the present switching—this is a weighted average. A. Well, you mean \$44.22 is not the switching charge, and as far as I know there is no intention of publishing that amount as a switching charge.

Q. As I understand Mr. Wascoe's testimony this was the average charge your company would have paid on the

sample cars that moved. A. Well, not to my understanding. This is a cost, estimated variable cost to handle traffic between S. P. and Peninsula Terminal Company. Now whether this is on the basis of what [541] it would cost us to operate ourselves out there or not I don't know. I am just not that familiar with it.

Q. What are the tariff charges? A. I named them.

Q. Is that \$32.29 a car generally? A. I believe, it is \$32.29, yes.

Q. Now, that is the charge that you today will not absorb unless there are special circumstances. A. Yes.

Q. Now, I refer you to Mr. Wascoe's Exhibit 43, you heard his testimony this morning, didn't you? A. Yes, I did.

Q. If you are going to move five cars yourself upon obtaining direct access, as I understood his testimony that would cost you \$37.12 per car in each direction or a total cost of \$74.24 per car in and out, isn't that the way he estimated the cost?

Mr. Young: Well, again, Mr. Examiner, I think this is improper cross-examination of this witness on another witness's exhibit. I don't think it is proper, these questions should have been asked of Mr. Wascoe.

Mr. Tjossen: I am laying a foundation for this witness.

Exam. Shoup: Sustained, the objection is sustained.

Q. (By Mr. Tjossen) I will ask you then, Mr. Ordway, if you will absorb a switch charge of \$32.29 only if there

are spe- [542] cial circumstances; how is it that you will extend your Portland rates out to Peninsula Terminal when your cost man estimates the cost of performing that service in and out, if it moves in five car lots to be \$74.24 a car? A. Well, I am just not able to say that. I am not qualified or in a position to say that at all.

Q. But you say you will extend your present line haul rates out there. A. This is a matter that has been established, I mean our people, our company has decided to do this, yes.

Q. And that is without regard to the costs involved or without regard to whether the rate would be compensatory in view of the service? A. I am sure that has been considered, but I was not in on that.

Mr. Young: I would point out to counsel, Mr. Examiner, that Exhibit 43 shows the cost, estimated variable cost to Southern Pacific Company to handle traffic to and from the Peninsula Terminal Company at \$37.12, not the 74 he is indicating.

Mr. Tjossen: As I understood it, he said that was the cost in one direction.

Mr. Young: Well, read the titles of the exhibit. Mr. Tjossen.

Mr. Tjossen: I can read the titles but I was going back [543] to what I understood he said.

Q. (By Mr. Tjossen) Then, I will state the question this other way. As I understand it, you are testifying that your company would absorb the switching charge of \$32.29 only if there were special circumstances involved and yet you will extend your Portland rates out here even though the additional service of getting there is going to cost you, as shown by your own cost man, \$37.12 a car, is that correct? A. We have decided to apply our Portland rates out there.

Q. And that is without regard to whether these short-line rates would be compensatory or not compensatory?

A. Undoubtedly that was taken into consideration, I am not in a position to say.

Q. Did you take that into consideration? A. I didn't make that decision.

Q. Who made that decision for your company? A. It was made by our vice-president of traffic.

Q. Did he ask you for recommendations? A. No; no.

* * *

[544]

CROSS EXAMINATION

Q. (By Mr. Weisser) Mr. Ordway, on Exhibit 45, could you tell me where you got these figures? A. We got a great deal of it from Mr. Wascoe. He supplied it and where he got it I am not sure.

Q. I mean the times and the dates were from Mr. Wascoe? A. The times and dates were secured as I understand through the Portland Terminal Company records, through the Peninsula Terminal Company records, and through our own records.

Q. And when you made this sample did you look into the movements to see what happened on any of these moves?

[545] A. Not beyond our line.

Q. So you are just looking at the originating time and terminating time, and you make a mathematical computation as to the elapse, and there is no determination of what went on in between, is that your testimony? A. That's correct.

* * *

[551] LARRY H. DUGAN
was sworn and testified as follows:

[553] DIRECT EXAMINATION

Q. (By Mr. Ploeger) Mr. Dugan, would you state your full name and address? A. Larry H. Dugan, 611 White Building, Seattle, Washington, 98101.

Q. Mr. Dugan, have you prepared your testimony in this proceeding, which has now been marked for identification as Exhibit No. 47? A. I have.

Q. Is that a true statement? A. It is.

Q. And are the exhibits identified as Exhibits 48, 49, 50, and 51 referred to in your testimony? A. Yes.

Q. And explained there? A. That's right.

Q. By way of supplement to your testimony, Mr. Dugan, I would like to ask, is it the purpose of the Milwaukee in petitioning in this proceeding to provide upon its extension to Portland, if and when that should occur, that all industries on Peninsula Terminal or any extension thereof would be on line industries for the Milwaukee? A. That is right.

[554] Q. And in that instance it would not be necessary for you to have a switching tariff or any absorption of tariffs? A. That is my understanding.

CROSS EXAMINATION

Q. (By Mr. Weisser) On your Exhibit 47, Mr. Dugan, Page 7, you refer to your Exhibit 51 pointing out that you have been authorized to file formal application under Section 1 (18) and 5 (2) covering line extensions and trackage rights covered by the Milwaukee conditions of the Northern lines merger case. Then you make the statement, " * * *

including operating rights any and all terminal facilities in the Portland Terminal area." Do you see that? A. You say I say—I see it, yes.

* * *

Q. "****" including operating rights upon all terminal facilities in the Portland area." Does that mean we are to expect an application which would seek access into Albina Yard and [555] Guilds Lake Yard and Barnes Yard of all the carriers presently serving Portland? A. I am not prepared to say here just to what extent that will be. I do say in my testimony that at appropriate times before or after the Commissioner has fired an effective date for its order we will take appropriate action. It is my understanding that Exhibit 51 covers the application specifically as to the Peninsula Railroad and—

Q. (Interrupting) No. 51? I thought Exhibit No. 48 made reference to this instant application? A. Yes, I think that is right, and then in 51 we have board approval to go ahead with other actions to implement the Commission's decision.

Q. Including the right to acquire operating rights over and to operate upon any and all terminal facilities in Portland, Oregon. That is on the second page of 51, is it not?

A. I will let the exhibit speak for itself on that.

Q. Well, then, is it your testimony that you plan on filing an application that would allow you into Albina, Brooklyn, Guilds Lake, and Barnes, in any of these yards?

A. I told you I am not in a position to say what will be the extent of the appropriate actions we will take later.

* * *

[556] Q. (By Mr. Weisser) You would agree with me, then, based on your testimony that a Section 1(18) or 5(2) application is necessary but Milwaukee is not now a railroad in the territory serving Portland, would you not?

A. We are not physically serving Portland now.

Q. And you are not in the territory, are you?

[557] A. We are certainly a railroad in the territory in that we handle business that originates and terminates in Portland. We are not physically as an operating railroad in Portland.

Q. You say upon implementation of its conditions. Do you foresee anything that would be required to implement that condition other than the Commission deciding to set a date for the Northern lines' merger to be consummated?

A. Certainly when the Commission's order in the Northern lines case is effective, we will be operating through train service between Sumas, Washington, as a connection for British Columbia and Portland.

Q. What do you mean by "through train service"? A. Just that. I couldn't say it any plainer. We will originate trains here and we will terminate trains here.

[558] Q. In Portland? A. In Portland.

Q. There has been some cross-examination by your counsel concerning the possibility of having a contract arrangement for handling Milwaukee traffic into Portland via one of the Northern lines. Were you here— A. (Interrupting) Not on line haul service. That isn't what we contemplate.

Q. What do you contemplate, that through train service would apply to Peninsula Terminal? A. We would expect to have Peninsula Terminal Company open to us. That is why we are asking joint ownership with the other three lines, or other two lines and then the third line, and we are asking for trackage connections from North Portland to the connection with the Peninsula Terminal line so we can give that through service.

Q. Will a through service to Peninsula Terminal that you contemplate have Milwaukee power operating into the North Portland interchange yard? A. Yes, sir.

Q. Even with— A. (Interrupting) To the North Portland area.

Q. North Portland area? A. Yes. Now, I believe from the testimony I have heard here, we do have an operating man on that, that the north terminal [559] yard would make a very practical arrangement for all the carriers serving Portland.

Q. For their interchange with Peninsula Terminal Company, is that your testimony? A. It could be that way.

Q. There is some confusion in my mind about whether you intend to use North Portland Yard as a point of interchange for all other areas in Portland? A. We would like to have that.

Q. That is not in your application, however, in this proceeding, is it? A. I would have to refer that question to counsel.

Q. Notwithstanding the fact that Milwaukee's present participation in traffic at Peninsula appears to be minimal, you would run your own trains into the North Portland Yard for interchange, is that your testimony? A. I think the record does show here that the business of the Peninsula Terminal Railroad and the industries on it is not large. But naturally we would expect to, that is why we would like the joint ownership, so as the terminal line is extended we would expect to get into the Rivergate area and be a potent part of the Rivergate area.

Q. What if this development of Rivergate is in the future, I think Mr. Linde said it was twenty years plus that he anticipated the full development of Rivergate, is it still your [560] testimony that you would want to run your power into the North Portland interchange? A. That

is right. We have been in business for 120 years and I expect we will be a good many hundred years hereafter.

Q. For the handling of about 46 cars a year? A. That will develop.

Q. You make the statement on Page 10 toward the top, "There is no point in setting up fast competitive schedules, however, where terminal delays caused by going through ~~one or~~ more competing connecting lines to get to the industry can more than offset any advances in service." Now, is this strictly addressed to Peninsula Terminal Company or is it addressed to the whole Portland territory? A. It would be the whole Portland territory and is true in transportation generally.

Q. Then you are desirous of getting into all terminals of all railroads in the Portland area? A. I didn't say that, and, as I said, we will have to consider what terminals we would like to have through cooperation and dealing with the other carriers, if possible. We definitely expect to give a full transportation service in Portland.

Q. Through connections with other lines, then? A. If that can be worked out, fine.

Q. And you would be satisfied, then, to interchange your traffic so that Union Pacific, for instance, could handle it [561] to their industries? A. We would have to see how it works out. Our position is that we want to be in Portland on a full equal competitive share basis with the other trunk lines or transcontinental lines serving Portland.

Q. However, you don't know what your applications will contain under Section 1 (18) or 5 (2)? A. I would not want to try to delineate that now.

[562] Exam. Shoup: Before excusing this witness the Examiner would like to ask the witness—

It is the understanding of the Examiner that the specific trackage rights which Milwaukee will request are not known at this time, is that correct, sir?

The Witness: Beyond this North Portland. We are speaking—we are asking very definitely joint ownership in the Peninsula Terminal Railroad and trackage rights over the connection from the S. P. and S. main line. We will be operating over to the connection with the Peninsula Terminal Railroad.

Exam. Shoup: Then, to that extent it is specific?

The Witness: It is specific.

Exam. Shoup: But not otherwise?

Mr. Ploeger: Mr. Examiner, if you will look on Exhibit 6 of the application of the Union Pacific and S. P. and S.—

Exam. Shoup: I don't have a copy of the application, sir. The Commission didn't see fit to provide me with a copy before this hearing.

Mr. Ploeger: Here is another exhibit I forgot to number. It is in the record, too. This shows the North Portland interchange track in red, or purple and yellow.

Exam. Shoup: The Examiner is familiar with that.

Mr. Ploeger: This is what the Milwaukee is seeking trackage rights on plus perhaps trackage rights on the Peninsula Terminal to the extent it is needed for tail track, and our [563] other operating witness will explain this.

Mr. Weisser: This is not in the application, Mr. Examiner, as we read it.

Mr. Ploeger: Well, regardless, we will explain that with an operating witness. As I explained to you, the trackage rights that we are asking for are specific and known.

. . .

[564]

JAMES T. HAYES

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Ploeger) Mr. Hayes, will you please state your full name and address? A. My name is James T. Hayes, 538 Union Station, Chicago, Illinois.

Q. (By Mr. Ploeger) Mr. Hayes, do you have before you what has been identified as Exhibit No. 53? A. Yes, sir.

Q. Is that your testimony in this proceeding? A. It is.

Q. And the maps and other attachments thereto are part of your testimony? A. Yes, sir.

Q. Is everything in there true and correct? [565] A. Yes.

Q. Is there anything you need to add to it? A. No, sir.

CROSS EXAMINATION

[566] Q. Let me ask you this. It is true, is it not, that upon Milwaukee's access to Portland, should this be granted, the Milwaukee will be absorbing switch charges in the same manner as all other carriers serving Portland as outlined by Mr. McIntosh's testimony in our direct case? A. I assume we would be doing the same as other railroads, yes.

Q. This is one of the recognized methods of the carrier not directly serving a particular point becoming competitive on the traffic, is it not, or would that be a better question for Mr. Cullen? A. I think this would be a better question for him.

[569] Q. This statement in the middle of Page 4, the last sentence in that first paragraph, "It still would be our intention to work out an efficient means of interchanging this traffic via North Portland," this, to me, is not too clear in light of your previous sentence where you talk about physical train moves. Is this what you anticipate as physical train moves into North Portland or do you want to work out some other arrangement for the handling of your traffic? A. Well, as my testimony states, we would attempt to set out the North Portland business at North Portland if the operating line would permit us to do this. If, however, they do not feel this can be done or would not permit us to do it, then we would negotiate with them a means of their handling it for us as our agent.

Q. If I understand your testimony, then, you are intending to either run your own trains or contract with the Northern lines for the handling of North Portland traffic, whichever would be the more efficient? A. We intend to operate our own trains into Portland. As a part of this operation, we would set out at North Portland, if permitted to do so. If, however, the owners of the line would not permit us to stop and set out there, then we would attempt to work out an arrangement with them whereby they would handle our cars into the interchange at North Portland if we had the trackage rights there.

[570] Q. Whether the Milwaukee serves Portland or North Portland directly by switching its own trains into the interchange or whether it contracts with the S. P. and S. or whoever you might call the owning lines for the handling of this traffic, the Milwaukee car supply would be available for Peninsula Terminal, would it not? A. Yes, it would.

PHILLIP J. CULLEN

was sworn and testified as follows:

[571] DIRECT EXAMINATION

Q. (By Mr. Ploeger) Will you please state your name and address? A. My name is Phillip J. Cullen. My address is Room 784, Union Station Building, Chicago, Illinois.

* * *

Q. (By Mr. Ploeger) Mr. Cullen, do you have before you what has been marked for identification as Exhibit No. 54? A. Yes, sir.

Q. Is that your testimony in this case? A. It is, sir.

Q. Is it true and correct? A. It is.

Q. Are there any additions or changes you wish to make? A. No, sir.

* * *

CROSS EXAMINATION

Q. (By Mr. Weisser) On Page 3 you mention the schedule you have between Chicago and Seattle. What schedule would you expect to have between Portland and Chicago?

* * *

[572] Q. Perhaps I didn't ask the proper witness the proper question on the switch study. Are you more familiar with this, perhaps, than Mr. Hayes? A. What is the question, sir?

Q. The switch study here in Portland. A. I know of it just in a general way.

Q. And you concur in Mr. Hayes's testimony that should Milwaukee be admitted to Portland it would absorb on the same basis as the lines presently in Portland?

Mr. Ploeger: Mr. Examiner, I would like to point out to counsel that the conditions of the Commission

in the Northern lines merger case are a part of the record. They spell out what we will do as between ourself and the Northern lines in the way of absorption in switching. Also the agreement between us and the Northern lines for our actual operation to the extent that it has been—there is any agreement at all with the Northern lines is also in the record, it is a part [573] of the testimony of the applicants. This, I think, gives you ample opportunity to know exactly what we are going to do in Portland.

With that in mind, you may proceed to cross-examine. But I don't believe it is necessary for us to go extensively into cross examination on what is in the record.

Exam. Shoup: Mr. Ploeger, that Northern lines merger proceeding is not actually part of the record in this proceeding.

Mr. Ploeger: Mr. Examiner, a part of the conditions that were awarded to the Milwaukee are. Of course the Commission can take judicial notice of what they have said and done.

Exam. Shoup: That is true.

Mr. Ploeger: But the conditions that were set forth in the Commissioner's order are now a part of the record. They were identified as Exhibit No. 50.

Exam. Shoup: I beg your pardon, sir?

Mr. Ploeger: The agreement is also in the record as a part of Mr. Hayes's testimony and also as a part of the testimony put in by one of the witnesses for the applicants, Mr. Lawrence.

Q. (By Mr. Weisser) Let me ask you this, then, Mr. Cullen. Would your Milwaukee participation in the Portland switch study or the common point switch study in the

Pacific Northwest be covered by any of the Milwaukee conditions in the [574] Northern Lines case? A. I don't understand your question. If we get into Portland, then our other agreement with the Northern lines regarding the switching of cars in Portland will be a fact.

Q. That is just between yourself and the Northern lines and does not apply to the Union Pacific or Southern Pacific, isn't that right? A. That is right. It is between the Milwaukee and the Northern lines, yes, sir. Of course this agreement will probably have an effect on other switching arrangements in Portland unless the study that has been referred to here is already a fact and the elimination of the competitive and non-competitive switching system is a thing of the past.

Q. That is what I am trying to get at. If it is a thing of the past or if it becomes a thing of the past once Milwaukee enters Portland, will Milwaukee be part of that, will they absorb switch charges on the same basis as other roads serving Portland? A. We want to be competitive in Portland. We want to do everything possible to be on a competitive basis with the other trunk lines in Portland.

Q. Is this on competitive traffic only or on non-competitive traffic also? A. If we are into Portland as a trunk line carrier, then we will have our arrangement with the S. P. and S., which doesn't, [575] which contemplates the elimination of the dual system of switching rates in Portland. You will have, if the other action precedes it and you have a new switching deal, then you will have a switching rate that can be absorbed by the line haul carriers. We will be absorbing whatever charges are necessary to keep us competitive with the other carriers.

Q. Competitive with other carriers? A. Trunk line carriers, yes, sir.

Q. Your statement starting at the bottom of Page 4, the top of Page 5, you say, "It is well recognized in the railroad industry, and my experience bears this out, that a shipper, all other things being equal, will generally favor the switching carrier with his competitive business." Will the switch charge be one of these factors which will make it equal—strike that. May I retract that question, please.

Will the switch charge absorption by Milwaukee have the effect of giving it equality with the switching carrier? A. Well, of course, the absorption provisions also would enter into it. If we are not in a position to properly absorb and a charge has to be passed on to the shipper, then we won't be competitive.

Q. But you will absorb on all competitive traffic, you said? A. To whatever limits we are allowed to absorb or that we conclude we should absorb. There are certain limitations that all the carriers have and which are, it is general policy [576] for a carrier to limit his absorptions.

Q. I see. So whether or not you are made equal with the switching carrier would be up to your absorption policies, is that correct? A. It would be up to whether or not the charges involved would be such that we could absorb, and that is why in this case we are seeking an opportunity to participate in the Peninsula Terminal. We want to make sure we aren't going to be shut out.

Q. Is there some set limit in the policy of your company which sets your absorption level or absorption limits? A. Well, it all depends on how much is involved, how much revenue is involved, what the costs are. If the costs are too high we are priced out of the market. That is why we are asking to become an owner of the Peninsula Terminal, to assure that that doesn't occur as far as Peninsula Terminal traffic is concerned. I point that out in my testimony here.

Q. Would ownership of Peninsula Terminal alone determine whether or not you absorb their charges? A. Oh, no. I didn't say that. I said as far as the Peninsula Terminal goes we want to acquire ownership so we could prevent being shut out on their business.

Q. That is the reason, then? A. Well, this is one of them.

Q. If I understood your answer to the previous question, you [577] said ownership of Peninsula in and of itself would have no bearing on whether or not you absorbed a particular switch charge? A. I don't follow the question. Now I lost you.

Q. I understood your previous answer to be the reason you want to own a piece of Peninsula Terminal and have direct access to that carrier is to become competitive. I contend or put to you that you could be competitive by absorbing the switch charge, but you tell me for some reason you can't absorb the switch charge unless you own the company. Now, I don't understand that. A. I think it is quite simple. If we are not an owner of the company, the owners could set the switch charge so high that we couldn't afford to absorb it. We want to get in on the Peninsula Terminal to participate in their business today and for the future and we don't want to be shut out of this.

Q. Do you envision that that would be the case, that Union Pacific and S. P. and S. would set the switch charge so high that we would shut you out of the business, as you put it? A. Either the switch charge or the service performed could shut us out. It is a combination of a good many things.

Q. You are familiar, are you not, with the application in this proceeding of Union Pacific and S. P. and S. and the representations we made to keep open the channels of

trade as [578] they exist? A. Yes, sir. As they exist, yes, sir.

Q. And if Milwaukee comes into Portland as a carrier and other carriers are getting the same set switch charge, couldn't the Milwaukee, if, in fact—strike that.

Wouldn't the owners of Peninsula Terminal be discriminating against Milwaukee if they set a different switch charge and be subject to action from the Interstate Commerce Commission upon complaint to set the same switch level? A. The owners are only going to be dealing with themselves. It will be the S. P. and S. and Union Pacific dealing with, as owners of Peninsula Terminal dealing with, S. P. and S. and Union Pacific. Now, as far as the way your application is set and, of course, you asked me about the statement you made that you are going to maintain the existing arrangements, and that to my mind contemplates Chehalis, Tacoma, Seattle, or any other place, and that isn't what we are looking forward to. We are looking forward to serving Portland and the Peninsula Terminal Company.

. . .

[579] Q. (By Mr. Devers) Mr. Cullen, on Page 6 in the testimony which has been the subject, I believe, of cross examination by Mr. Weisser, you say that the companies owning Peninsula Terminal can obtain traffic rights by mutual agreement over Peninsula so that industries served by Peninsula are on-line industries for them. Is it your understanding that that could be done without I.C.C. approval? A. If the Union Pacific and the S. P. and S. were owning the Peninsula Terminal, I imagine they could work out things that would be satisfactory to the owners without any difficulty.

Q. By "mutual agreement", is it your understanding they could arrange to operate over the line of Peninsula Terminal without Commission approval? I just wondered how you looked at that. A. They could certainly work out a good many arrangements that would be mutually beneficial. Whether or not the type of—whether there had to be some Commission approval in certain instances, I am not sure, but I had in mind that as owning lines of the Peninsula Terminal they would be in a very advantageous spot of working out things to their own satisfaction.

. . .

[583] E. GROSVENOR PLOWMAN
was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Delisi) Will you please state your name and address. A. My name is E. Grosvenor Plowman, my address is 48 Partridge Circle, Portland, Maine, 04102.

Q. Have you prepared three exhibits previously identified in this case as Exhibit 1, which is your statement, and accompanying exhibits, Exhibits 2 and 3? A. I have.

. . .

CROSS EXAMINATION

Q. (By Mr. Weisser) Dr. Plowman, are the estimates contained [584] in Exhibit 2, ones you developed or were they developed by someone else? A. I developed them myself.

Q. I see. On Page 2-4 of your statement, the last sentence of the first paragraph you state, "Joint ownership of Peninsula is the first step in providing Rivergate with efficient railroad-type mass transportation." Was this your conclusion or someone else's? A. It was mine.

Q. This was not based on the D.M.J.M. reports? A. It was based on my personal studies which included study of the D.M.J.M. report.

Q. On Page 2-6, the last sentence of the top paragraph on the page saying, "Thus making possible direct and low-cost interchange between Milwaukee and Peninsula Terminal." Did you determine any traffic level that Milwaukee may be interchanging with Peninsula? A. This all depends, sir, on whether you are talking about Peninsula Terminal as it is today or whether you are talking about Peninsula Terminal if it becomes the northern gateway to Rivergate. If the latter, I would anticipate that the Milwaukee Railroad would have a great deal of traffic interchange at that point.

Q. If Peninsula remains as it is today, however, and is not used as the northern gateway to Rivergate, would there be [585] sufficient traffic to make, in your opinion, interchange by Milwaukee with its own people economical?

A. My testimony has been directed entirely to the problem of the relationship of the Peninsula Terminal Railroad to Rivergate and to Rivergate's growth.

Q. I see, and should Peninsula not be used for a vehicle of entry into Rivergate then you would have no opinion as to the ownership of Peninsula Terminal? A. I could have an opinion but that would be all it is because I did not consider it.

Q. I see.

Now, on Page 3-2 of your statement, the bottom of the page, the sentence starting, "Bulk traffic moving in solid blocks of cars and fixed consist unit trains." Just how could unit trains be handled through Peninsula Terminal Company? A. Again if you were talking about the Peninsula Terminal Company trackage as it exists today, that would be one thing. If you were talking about Peninsula

Terminal trackage as redesigned for handling unit trains, that would be another. It is the latter that I have considered and I see no problem.

Q. However, if it were not redesigned it could not handle unit trains, could it? A. I heard testimony a day or so ago, I believe it was Southern Pacific testimony, to the effect that unit trains consisting of short cars, namely ore cars which I believe are [586] rarely over 30 feet long, could be handled on the present curvature of the present Peninsula Terminal Railroad.

Q. Are you aware of the size or the weight of rail that Peninsula has? A. I have already testified that I have not considered the Peninsula Terminal Railroad as it exists today but rather as it would be redesigned.

Q. And your opinion is based solely on the testimony of a prior witness. A. I heard his testimony and I attempted to reproduce it.

Q. You are aware, then, that one plan that has been proposed is that the north end of Rivergate be served from a lead extending to the west of the S.P.&S. mainline from this mainline, have you not? A. Yes, sir.

Q. And if Peninsula were not used as the access to the north end of Rivergate this type of a lead would be the approach probably used, would it not? A. This is certainly one of the methods of redesign of trackage so as to permit access from North Portland Terminal to the north end of Rivergate. I would assume that it could be through Peninsula Terminal.

Q. When you say North Portland Terminal in your answer— A. (Interrupting) North Portland Junction.

Q. That general area rather than having a proper name to a [587] specific location. A. That's right.

• • •

[589] Q. (By Mr. Devers) Mr. Plowman, in answer to questions of Mr. Weisser it has been developed that there may be two alternative methods of serving north Rivergate by rail or perhaps two gateways as you used the term. Do you know how the D. M. J. M. report shows the north Rivergate will be served by rail? A. There are several different diagrams which differ slightly but I believe the diagrams that deal principally with the railroad network imply that there would be a curve track from the west side of the S.P.&S.; an elevated grade, around to the entrance to Rivergate approximately at the point where the Peninsula Terminal now enters Rivergate.

Q. Now, would you have an opinion as to the best way to serve Rivergate between operating over the lines of Peninsula [590] Terminal and taking off from the west side of the S.P.&S. track? A. You mean operating over the present line of the Peninsula Terminal?

Q. Over that line or as it may be developed. A. I believe it is possible and certainly in the event of redesign of the Peninsula Terminal trackage I am sure that the track engineers would consider an alternative proposal to the one that is shown in the D.M.J.M. report which would consist in removing the present track underneath the main line of the S.P.&S. and moving it south maybe five hundred feet or so and making a new, in effect, a kind of a viaduct or tunnel underneath the main line at that point. This would also be an entirely satisfactory way I would think for the access by Peninsula Terminal into Rivergate.

Q. Do you think that access method would be preferable to a connection from the, directly from the S.P.&S.? A. I think that is an engineering question primarily.

. . .
[593] Q. Have you made a personal observation of this particular area, Mr. Plowman? A. Yes, sir.

. . .
Q. (By Mr. Green) But you do anticipate they will have to build perhaps passing tracks of up to one hundred fifty cars in time. A. Well, here is what we are dealing with. We are talking about the industrial area that can project Portland into the twenty-first century. It is going to have the finest [594] railroad track layout and the best access by all the railroads, the finest setup that can be imagined so my answer is yes, we must plan and think in terms of one hundred fifty car lengths for trains.

. . .
WILLIAM S. DIRKER

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Delisi) Will you please state your name and business address. A. My name is William S. Dirker, Jr., Lindsay Building, Portland, Oregon.

[595] Q. Mr. Dirker, did you prepare Exhibit No. 4, your statement in this case, and Exhibits 5 to 21, inclusive? A. I did.

. . .
[596] (Intervener's Exhibit No. 5-A, Witness Dirker, was marked for identification.)

. . .
[597] A. Exhibit 5-A shows the location of industries within the Rivergate industrial district. I will describe these for your attention. Starting at the north end of the

exhibit in the column by a river you will see the words "Crown Zellerbach Poleyard" with a line extending down to a green cross-lined area in the northeast corner of Rivergate.

Now moving down to the northwest or actually west end of Rivergate along the Willamette River and starting at the bottom of the south end you see the words "Crown Zellerbach Water Waste Terminal". This is not cross-hatched as this transaction was just consummated yesterday and announced today. This is a new industry in Rivergate.

The next one to the north above that is designated as the Ashgrove Lime which is the 30-acre plot cross-hatched with the green lines.

Immediately to the east of that across North Rivergate Boulevard in the interior Rivergate is the Conmetco site, a division of Consolidated Freight Waste.

Back to the river and extending north about Ashgrove is the Collier Carbon and Chemical site. The general representative testified here previously.

Extending above that to the north is the 150-acre Oregon Steel Mill site who have also testified in this proceeding.

Q. I take it that all the industries have waterfront locations except Conmetco? [598] A. That is correct.

Q. Now would you also take your Exhibit 5-A, to what extent has the Port of Portland constructed rail facilities within Rivergate, the green area on the map? A. The port has constructed rail tracks from the connection with the railroad-owned tracks at the boundary of Rivergate and this is designated on this Exhibit 5-A as Point A with a circle around it. It is where the green and the yellow join just to the east of the Bonneville Power Substation at the boundary of the port-owned property. The port-owned track then extends generally west parallel—

A. (Continuing) The port-owned track extends from that Point A at their boundary generally west parallel to the boundary crossing North Rivergate Boulevard and then turning north and extending to the Oregon Steel Mill site previously designated. This rail track extends beyond the track shown on the map a short distance as the track was extended after the map was made.

Q. (By Mr. Delisi) - Now, to what extent does the port own the [599] track and the roadbed in the green area?

A. The port owns all of the right of way, roadbed and track in the Rivergate Industrial District except for that track within the private property sold or leased to private industry.

Q. Does any railroad own track within Rivergate? A. Unless it is within a private industry's plot, no, they do not.

Q. . . . Does the port have any agreement with any railroad company limiting the use of present or future tracks within Rivergate or limiting direct access to Rivergate to one or two or three railroads or less than all of the railroads serving Portland? A. The port has no agreement with any railroad regarding rail service or rail facilities in the Rivergate Industrial District.

Q. Is there any limiting agreement of that carrier, any such agreement with the Union Pacific, the S.P.&S., the Southern Pacific, the Milwaukee, the Great Northern, the Northern Pacific, either singly, jointly or any other way? A. There is no such agreement of any kind.

Q. Mr. Dirker, what are the port's plans, if any, for a rail track between what Dr. Plowman calls the northern gateway, that is, the Crown Zellerbach Poleyard territory and the area near Oregon Steel Mill's? [600] A. The port's planning consultant, D.M.J.M., has recommended that Rivergate be served by a large loop rail track system

connecting the southern gateway, if you wish, near the Barnes Yard to the northern gateway in the vicinity of the Peninsula Terminal Company. The port by its statement of policy has concurred in this concept and is proceeding to develop this, implement the concept of this plan.

Q. Could such a loop system connect with the Peninsula Terminal or with the S.P. & S. main line directly? A. Yes, it could connect with either as the conditions warrant and the engineering and cost elements are taken into consideration.

Q. Mr. Dirker, what is the extent of the landfill within Rivergate? A. Currently there are about four hundred acres filled to useable grade along the Willamette River. There is some land along the North Portland Harbor that is up to grade, perhaps a hundred or more acres and then along the Willamette River area behind the Oregon Steel Mill site and north of it is another some three hundred acres currently partially filled and under active filling now. The port's dredge Oregon, a very large 5,000 horsepower pipeline dredge is working this very day filling this land right now. As a matter of fact, the Port Commission has recently appropriated an additional \$600,000 for filling in this fiscal year bringing to a total of [601] about a million and a quarter dollars their filling program for this year.

Q. What do you expect will be the probable period of completion of the landfill? A. The planning consultant recommended a face landfilling program that was balance against their estimate of the engineering requirements and of the marketing requirements, the general concept of the plan fill was to fill the exterior land, the waterfront land first because this is where the strongest market demand is for and it is easiest to fill. The remaining land in the interior would be filled in later years. Their program ran to the final small plot ending in about 1984. This land in

the exterior that was to be filled first is waterfront, water oriented industrial land that is in a regional competitive market or even a national competitive market and has a very strong demand and I think that has been evidenced by the sales made recently.

The interior land is land that is suitable for distributive and warehousing purposes. This land is in the competitive market within this metropolitan area. Our consultants estimated that this would, the competitive land would become scarce in the 1980's and that this interior land then would become competitively attractive and at that time facing they also then planned the freeway system which would make this distributive land attractive.

[602]

CROSS-EXAMINATION

Q. (By Mr. Devers) Mr. Dirker, does your Exhibit 6 show this new plan recommended by D.M.J.M.? A. Yes, sir.

Q. And this plan has been adopted by the port? A. No. This is the planning consultant's recommendation. The policy of a northern and a southern gateway and a loop concept has been adopted by the port.

Q. Is this the identical plan which is shown in the D.M.J.M. report which was prepared for and given to the port? A. I believe this is one of their transparencies that have been reproduced, yes, sir.

Q. And Rivergate is shown outlined in a dotted black line, is that correct? A. That is correct.

Q. On Exhibit 6. A. That is correct.

[603] Q. And in the northeast top of the exhibit is shown two alternative methods of access to Rivergate, is that correct? One from the S.P.&S. main line and one from Peninsula Terminal? A. That would appear to be the case, yes. I am not certain that that rail line in their

proposal, however, is the exact alignment of the present Peninsula Terminal Company.

Q. Well, but in their proposal did they show as part of their loop plan these two alternative methods of serving Rivergate by rail? A. I believe, and it is just my opinion of what the consultant's recommendation is that what they show is not an alternative but two accesses connecting.

Q. I see. Was there a recommendation in the D.M.J.M. report as between these two methods? A. They did not identify them as alternatives.

Q. Did they recommend that there be two accesses to Rivergate at this point in the norm? A. They presented this map without discussion.

Q. Without discussion? A. Right.

Q. Does the port have a recommendation as between these two? A. No, sir, we have not made these studies at all.

Q. Is the port suggesting that both methods of access be constructed? [604] A. The port just has not studied the details of this.

Q. Well, the port is certainly interested in access to Rivergate. A. Very vitally.

Q. And without waste, I believe. A. Yes, sir.

Q. Well, in your judgment do you believe both of these methods would be desirable? A. I have not made any analysis of this.

* * *

[606] Q. I see. Now, with reference to your Exhibit 5-A you testified as I think has been testified before on this record that the port constructed the rail line between Point A and the termination of that line within Rivergate. A. Yes, sir.

Q. Is it the plan of the port to construct all railroad lines within Rivergate? A. That has been the policy to date but the policy of railroad track construction and operation has not been determined for the future.

Q. Is there a plan for financing that construction if the port determines to do so? A. That neither has been decided.

Q. Can you tell us approximately how far, how many miles it is from the North Portland Junction through this north gateway to Rivergate to the Oregon Steel Mills via this loop plan?

Mr. Delisi: I am not quite sure I understand your question.

The Witness: I don't either.

Mr. Delisi: From where, are you referring to 5-A?

Q. (By Mr. Devers) I am referring to your Exhibit 6. I want to know approximately how far it is from the North Portland Junction over the line of Peninsula Terminal through Rivergate to Oregon Steel Mills on this proposed loop plan. A. From the vicinity of the North Portland Junction, not precisely at it—

[607] Q. (Interrupting) I understand. A. (Continuing) —and not precisely over the Peninsula Terminal trackage and not precisely along this—

Q. (Interrupting) If it doesn't go precisely over Peninsula Terminal it has to go precisely over something, it would go precisely over the connection from the S.P.&S. A. The S.P.&S. line generally parallel to the river and circling around, as this loop projects and then extending back to the present port track in the vicinity of what is known there as Yard B on this Exhibit 6. It is about four point—about five miles.

Q. Well, now, in order to build that line you testified there is a large filling project required, is there water to be crossed by bridge? A. The Columbia Slough is a presently designated navigable waterway but there is a

project under way to deauthorize that as a navigable waterway and the hearings will be held this spring.

Q. Are there swamps to be filled? A. Yes, sir, in several places there are very low lying lands but the road-bed along which generally that shows here on this map as a railroad loop much of that has already been filled and is being filled right now.

Q. In your best judgment how many years from now would you say it would be before Oregon Steel Mills could be reached on [608] that route by rail? A. Our chief engineer of the Port of Portland has made an estimate that if the conditions warrant it, if it was required to provide service generally along this loop and connecting to the northern gateway the filling could be done, settlement take place and the trackage constructed in approximately one year.

Q. Is that the plan of the port? A. It is one of the options of the port.

Q. I mean is it presently within your planning that Oregon Steel Mills may be served through North Portland Junction within one year?

Mr. Delisi: Mr. Examiner, I submit that the witness has already answered the question, it is one of the options.

Mr. Devers: I think we are entitled to know what the port plans.

Mr. Delisi: It is one of the options, what more do you want?

Exam. Shoup: Overruled.

Q. (By Mr. Devers) How long does Oregon Steel Mills strike that.

Would you say you could represent to the Oregon Steel Mills or Ashgrove or Collier Carbon and Chemical, that

within one year they may be served by rail over that route?

A. Physically, yes, but we would have—

[609] Q. (Interrupting) Actually. A. There are many areas of negotiation that must be constructed, must be undertaken.

Q. Well, this fill program you said would be completed at an outside date of 1984, does that include any of the land that would be involved in such a route? A. The berm underlying the track, much of that has already been filled and, of course, the full fill program as I have mentioned to you before was based upon a balance of engineering and marketing factors but if the marketing factor is accelerated this fill program could be completed within the port's resources in about one-third of the time that the planning consultant recommended.

Q. I don't think I got, I received an answer to the question. Does that railroad group which you described reaching from North Junction to Oregon Steel Mills lie on a right of way that is included with any of the area that is to be filled no sooner than 1984? A. It could be filled within a year.

* * *

[610]

ALFRED M. ESCHBACH

was sworn and testified as follows:

DIRECT EXAMINATION

[611] Q. (By Mr. Delisi) Colonel, will you give us your name and business address, sir. A. My name is Alfred M. Eschbach. My business address is Portland Public Docks, 3070 Northwest Front Avenue, Portland, Oregon.

Q. Colonel, have you prepared a statement for presentation in this case? A. I have.

Mr. Delisi: Mr. Examiner, that has been identified as Exhibit 22.

[612]

CROSS EXAMINATION

Q. (By Mr. Weisser) Mr. Eschbach, there has been admitted in this proceeding by the previous witness, Exhibit 5-A. I wonder to clarify the record and perhaps my own understanding of the location of your facilities could you locate any or all of the facilities of the Dock Commission which you refer to on Exhibit 5-A either by marking the exhibit that is in evidence if others will stipulate to that or by describing in your testimony where it is. A. I can describe it for you. The presently owned facilities of the Portland Public Docks shown on Exhibit 5-A are those facilities shown in a yellow cross-hatch on the Willamette River downstream approximately—I don't have a scale.

Q. It says Terminal No. 4 in the midst of it. A. This is not complete. The cross-hatching should extend to within about, for a matter of measurement, approximately one-half inch of the St. John's Bridge.

Q. To within one-half inch of St. John's Bridge? A. Yes, and that would be the present holdings of the Commission of Public Docks.

Mr. Merrill: Is that all on one side of the railroad track there?

The Witness: It is all on the river side of the Union Pacific Railroad track.

[613] Q. (By Mr. Weisser) Could any of these facilities be served from Peninsula Terminal Company? A. In its present location and as presently operated?

Q. Yes, could they be served from Peninsula? A. No

MILTON A. MOWAT

was sworn and testified as follows:

[619]. CROSS EXAMINATION.

Q. (By Mr. Tjossem) Mr. Mowat, your Exhibit 23-D, the examples of the rate application you show in that exhibit assumes, does it not, that Peninsula Terminal will be extended into the North Rivergate area? Let me ask the question another way. If, in fact, the S.P.&S. and the Union Pacific [620] upon acquiring ownership of the Peninsula Terminal elect not to extend that railroad into the Rivergate area and elect to extend a line from the S.P.&S. main line into Rivergate, would these samples of what would happen with the rates via Peninsula Terminal then be true? A. In some cases where routing was allowed by the Oregon Electric, then these rates would apply but where the routes are by the Southern Pacific, they would not apply.

Q. Well, the fact is—strike that.

If in fact the Union Pacific and the S.P.&S. do not extend Peninsula Terminal into the Rivergate area would the ownership, joint ownership of Peninsula Terminal and direct access thereto by the Southern Pacific or the Milwaukee actually give you any rate relief you are seeking as indicated by your Exhibit 23-D?

Mr. Wilson: Do you assume in your question that we have equal ownership in Peninsula Terminal and the Milwaukee?

Mr. Tjossem: Yes.

A. There would be no effect as far as I see it because you are not serving anyone in the Rivergate Industrial District if I understand the question correctly.

Q. (By Mr. Tjossem) And if Peninsula Terminal does not serve Rivergate then an industry locating in Rivergate would not have direct access to the Southern Pacific or the Milwaukee via that route, would they? [621] A. No, sir.

Q. So that if joint ownership is, joint acquisition by all four lines is ordered and the trackage rights requested are ordered and the owners then elect not to extend Peninsula Terminal into Rivergate you still would not be able to offer industries direct access by the Southern Pacific or the Milwaukee, would you?

Mr. Wilson: Are you assuming again that S.P. is an owner when you say the owner—

Mr. Tjossem (interrupting): I said all four owners.

A. You are correct.

[624]

THOMAS W. DENCH

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Crabtree) Would you state your name, please. A. Thomas W. Dench, D-e-n-c-h.

Q. Where do you work, Mr. Dench? A. Public Utility Commission of Oregon.

Q. What is your address? A. 208 Public Service Building, Salem.

[627] Q. Referring, then, to Page 2 of Exhibit 56 for identification, can you explain why it was necessary to make the change in wording that you made there? A. After discussion with the Port of Portland officials they called to my attention that the actual ownership of the

trackage in the port—the actual ownership of the trackage in Rivergate was owned by the port although the service was jointly rendered by the Union Pacific and S.P.&S.

[629] / CROSS EXAMINATION

[633] Q. (By Mr. Young) Are we to understand from the last sentence of your prepared statement that you support the position of the Milwaukee in this case? A. Yes.

Q. And you also support the application of Southern Pacific in this case? A. For access to Peninsula Terminal, yes.

[637] HOLLIS NENOW
was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Watson) Will you state your name and address and who you are employed by and who you represent? A. My name is Hollis Nenow, address 2414 Northeast Floral Place, Portland, Oregon. I am the general chairman for the Brotherhood of Railway Clerks representing the clerks on the Portland Terminal Railroad. I also am employed full time by the Portland Terminal Railroad as a clerk.

[638] CROSS EXAMINATION

[649] Q. (By Mr. Wilson) Mr. Nenow, do you consider 30 hours a reasonable time and adequate service to move cars a distance of about 5.2 miles? A. I certainly do not.

[651]

CROSS EXAMINATION

Q. (By Mr. Weisser) Well, I think the question was put to you by Mr. Wilson concerning 30 hours for delivering cars 5.2 miles. Now, in his question was no factual statement of what might take place between the time the cars are delivered and the time the cars are taken on to the next point. In other words, what took place besides transportation alone, do you have any knowledge of the work that goes on between the time the railroad is delivered cars and then they subsequently deliver them to the next interchange point.

A. Well, I have an idea when you have several cars in a train of, let's say, 40 cars, and if they are spread out among these 40 cars it's considerable switching to get them out and into a designated track, and from that point they have to be taken out [652] to the industry or wherever it happens to be going, but like I have stated in my statement, I thought that the Southern Pacific could block these cars and send them direct to the Union Pacific or to the Portland Terminal Railroad and there would be no delay and the engine could hook on to it and take it out to the site. Or when it's delivered to the Portland Terminal Company, the terminal company would have to deliver it to the S.P.&S.

Q. (By Mr. Weisser) So your answer as to Mr. Wilson's question concerning the 30 hours would be represented solely to transportation time between two points, which were 5.2 miles apart without regard to any classification or inspection or waiting to accumulate enough cars to run out with the load or other railroad practices, would it be? A. Well, my answer would be that any business

could be hurried up through an interchange point, that is if the cars were blocked and there was not switching required to get them out and take them to the designated area.

[666] -

EDGAR E. SMITH

was sworn and testified as follows:

DIRECT EXAMINATION

[667] Q. (By Mr. Watson) Mr. Smith, will you state for the record your name and address, occupation and who you represent in these proceedings? A. Edgar E. Smith, 5131 Southwest Orchid Street in Portland, Oregon. I am the general chairman of the Brotherhood of Locomotive Engineers on the Union Pacific Railroad, Northwest District Oregon Division.

Q. And how long have you been general chairman, Mr. Smith? A. I have been general chairman since 1959. Prior to that time I was a fireman and an engineer and presently hold a seniority date as a fireman of March 1, 1937.

[668] Q. Mr. Smith, in these proceedings we have had considerable testimony by operating personnel from the Union Pacific concerning the amount of congestion that they anticipate if the Southern Pacific should be granted bridge trackage rights from the East Portland to the Peninsula Terminal Railroad. Could you elaborate as to what, in your opinion, would be the added amount of congestion if this application was so granted? A. Well, of course, Mr. Watson, I have no way of knowing what the Union Pacific officers may have stated before, as I was unable to attend the meeting, however, I have been informed by many of our members, and having worked in the area

myself, that approximately 75 per cent of our freight trains operating over the Kenton line are delayed as a result of the congestion in this area. It's a little hard to indicate just exactly how much time is lost in this area, but I would say from 15 minutes to two hours and sometimes more. This is a result of the yard congestion, as you know, we have single-track operation between St. John's Junction and Troutdale, consequently it is a case of move when you can. If it's possible at all the crews coming into the Kenton area are advised to stay back at the upper end of Kenton so that the road crossings will not be blocked. However, this is not always possible, and there is a considerable number of private crossings serving industry in the Kenton area [669] and this is where we engage most of our difficulty. We have cases where the irate public, because of the crossings being blocked, anglecocks are turned, pins are lifted on the cars, and, of course, this then causes considerable delay. We also have at times more than one train moving into Portland at or close on another one's schedule and then, of course, we have no alternative that there has to be road crossings blocked at this time. The carrier has recently been moving freight when at all practicable up the Sullivan's Gulch, when they have the power, because of the grade, they do move trains up this way in order to keep from being congested in the Kenton area. However, I would say the biggest portion of your trains are moved by the way of Kenton. We have, of course, north end trains, switch engines, east and westbound freight trains east, all utilizing the tunnel between St. John's Junction and Kenton or Peninsula Terminal. We had anticipated putting on additional engines, instead of going on duty at Albina many of these engines were going to go on duty at Terminal 4, this is what our plan to start today. However, that was

stopped at the present time. But this was another reason we fooled along with the carrier that in order to utilize the working potential that was available that more engines would have to go on duty outside of Albina in order to get the work done in the most expeditious manner.

Q. Mr. Smith, by starting a crew at Terminal 4, this would re- [670] lieve the congestion from Albina to Terminal 4 by the crew that does this work now, wouldn't it?

A. Yes, by starting engines at Terminal 4, they can work in the vicinity of Terminal 4 and on the St. John's line. Crews can move out of Albina on the St. John's line without going through the tunnel or the main line. Crews can also operate from Terminal 4 to the Barnes Yard and serve also the Kenton area.

Q. In this Kenton area you referred to, would you say this would include any future development of Rivergate area and the Peninsula Terminal Railroad? A. Would you restate that, please?

Q. I said, in this Kenton area that you referred to and Terminal 4 where the engines, you say additional engines would be started, would they be available to serve any future needs of the Rivergate area that has been mentioned in this cross examination? A. Yes.

Q. Then that would be a fact that they could more expeditiously handle the cars going to the Rivergate area? A. We would have the engines available without being blocked on the—where we have our congestion between Albina and Peninsula Terminal, right. I also failed to mention that another move that would be put into operation in order to cope with the congestion, road crews are setting out many cars, especially during the wheat movements at Kenton and yard use that takes [671] cars from Kenton to the Barnes area and also from there to Terminal 4. This allows these cars to never enter into Albina which would further congest the traffic in that area.

[672] Q. (By Mr. Watson) Mr. Smith, if the cars that the S. P. is handling to the Union Pacific at the present time was blocked by the S. P. going into the Albina yard, would there be a possibility that a Union Pacific could take those cars and expedite the movement to Peninsula Railroad without having to switch them out of these cuts of cars? A. Yes.

Q. In your opinion, this would shorten the time for delivery to Peninsula Terminal Railroad and the industries there? A. Yes.

R. B. HARDIN

was sworn and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Weisser) Would you state your name, please. A. R. B. Hardin.

Q. What is your employment? A. I am assistant superintendent for the Union Pacific Railroad, organization division.

Q. What is your business address? A. 2525 North Larrabee Avenue.

Q. In Portland? A. In Portland.

Q. Is that address located within the Albina Yard of the Union Pacific Railroad? A. Yes, sir.

Q. What are your duties in your present position? A. I am a supervising operating officer. My prime duties are supervising train engine yard movements, other personnel on the railroad. My territory incorporates our entire organization division, from Seattle, Washington to Portland, Portland, Oregon and to Huntington, and Hinkle, Oregon, to Spokane and the S. I. Railroad.

[736] Mr. Weisser: Would congestion caused by Southern Pacific entry over tracks of Union Pacific cause the need for extra handling.

A. It is my understanding that the Southern Pacific, through Mr. Kilborn, has testified that they intend to handle a car or cars from Brooklyn to North Portland using the Union Pacific trackage from East Portland to North Portland Junction. If [737] this was the case, and since there are no main tracks through the Albina area, there are no running tracks through the Albina area, it would be necessary to have some track clear for the movement to North Portland, and the movement from North Portland back to the Southern Pacific. By taking away one of our classification tracks in the Albina area, this, of course, would result in our not being able to use that track for classification as we do now. And any time you take away any of the facilities in a terminal that does have congestion such as Albina does have, then you are interfering with your operation.

[738] Q. (By Mr. Weisser) At East Portland, are engine movements over the Union Pacific tracks taking place in this area, and if so, would you give us the details? A. Yes, there are engine movements in the area and between Albina and East Portland, and this movement is delivery of traffic via Union Pacific crews from Albina to the Portland Terminal Railroad. We have two from the East Portland terminal or East Portland Yard switch engines moving back and forth in this territory. We have adjacent to the tracks between East Portland and the south end of Albina two elevators [739] which require service and is not uncommon for each of them, there are two of them, for each of them to require service on each shift or three times in the 24-hour period. We, because of the con-

gestion between St. Johns and Peninsula Terminal; Peninsula Junction, have been running a number of our trains eastbound trains via the Sullivan's Gulch in order to keep them out of this congested area, and they operate into and out of the Albina Yard via this route. And this is also the route that the S. P. uses to deliver traffic from the Brooklyn Yard to the Albina Yard. And I would like to add in this connection that when it is necessary to furnish these elevators, the services that are located on this track between East Portland and the south end of Albina Yard, it is necessary to block off this track which, in effect, makes this a single track while this work is in progress rather than a double track.

[741] Q. Now at East Portland interchange, is there an interlocker? A. Yes, sir.

Q. Is there a speed restriction when crossing that interlocker? A. Yes, there are restrictions, eight miles an hour while trains or an engine are moving within the limits of the interlocking plant.

Q. Does that mean the whole train has to go eight miles an hour while crossing the interlocker? A. Yes, sir.

Q. What is the speed limit on the train once the interlocker is cleared in the Albina Yard area? A. Via Sullivan's Gulch?

Q. No, through Albina Yard. A. The speed limit itself as stated in our timetables is 35 [742] miles an hour in yard limits. However, there are other restrictions which do tend and lend to cause the speed of trains and transfers to be less.

Q. What would be the operating speed because of these other restrictions in the Albina area? A. Well, the engineers are supposed to operate their trains and engines prepared to stop short of any obstruction or switch not

properly lined, or anything that might affect the movement of their train.

Q. Now, in addition to Union Pacific, use as you have described of the steel bridge do other railroads use that steel bridge and go through the East Portland interlocker? A. Yes, the Southern Pacific uses the East Portland interlocking plant and the steel bridge for movement of their trains and engines from Brooklyn to the Portland Terminal Railroad and return, the S. P. & S. operates out of their Hoyt Street Yard, move across the steel bridge into an area that they also serve in the East Portland area and they also use the same steel bridge.

Q. Are there passenger train movements of Southern Pacific over the steel bridge? A. Yes, sir.

Q. Now, on the Sullivan's Gulch area shown in green, are switch engines operating between those points and Albina Yards through the East Portland interchange?

[743] A. Yes, we have engines assigned that work in the Sullivan's Gulch area because there are industries in the area that require service and we do have two engines, at least two in the 24-hour period that do work in this area and move in and out of Albina. They do go on and off duty at Albina, yes, sir.

Q. Does Sullivan's Gulch have any grade problems? A. Yes, there is a grade of one and two tenths per cent one mile east of the East Portland interlocking plant on the Sullivan's Gulch.

A. In reality this does reduce the speed of the train, as it leaves the interlocking plant, however, the most important thing on this particular grade is the fact that without more power than is really required to handle the trains eastbound we cannot operate the trains, all the trains we would like to up Sullivan's Gulch because it would be nec-

essary to add more engines to the trains, and as a result in some cases it is necessary for this reason to operate trains via the Kenton line.

Q. (By Mr. Weisser) Now, on this line between East Portland [744] and the south end of Albina, according to Exhibit 37, it shows close proximity to the river, is that true? A. Yes, it is close, it is right, and the banks of the river and there is barely room for the two elevators that I referred to to have their facilities between the railroad tracks and the river.

Q. And there are two tracks that run then between East Portland and Albina all the way? A. Yes, sir.

Q. Is there room for any more track? A. No, sir, because of the river on the west side and there is a high bank with interstate highway as well as motels and other things, there is no room for expansion between Albina and East Portland interlocker.

Q. Now, the Albina Yard itself has been described previously as a classification yard, would you tell me the general area from which traffic is drawn to take through the Albina Yard for classification and subsequent movement or just subsequent movement? A. We have traffic that we bring to Albina, as I said, from the Portland Terminal Railroad, we have traffic that is delivered to us from Brooklyn via the S. P., receive our trains that arrive from the east points as far as Kansas City, Council Bluffs, through our Salt Lake Freightway; some through the Pocatello area that come into the Albina area, we have [745] traffic that moves out of the territory between Hinkle and Spokane; and the S. I. Railroad that moves in from the east via the Sullivan's Gulch or the Kenton line. We have traffic that originates at industries within the Albina area itself, we have traffic that arrives Albina from our connections between Albina and Seattle, and we have traffic

that originates in the other switching territory in the Albina switching district.

Q. You mentioned you receive traffic from the Portland Terminal Railroad, where is that received? A. We pick up, Union Pacific handles transfers to and from the Portland Terminal Railroad. We interchange our cars at the depot yards and pick up the traffic from the Portland Terminal Railroad and handle it back to Albina.

Q. That is west of the steel bridge, across that bridge? A. Yes, sir.

Q. And the Union Pacific makes a switch move across there and back whenever picking up or dropping traffic? A. Yes, sir.

Q. Now, on up at the top of Exhibit 37 beyond the North Portland Interchange Yard shown a line of track that is jointly owned by the S. P. & S. and N. P., does Union Pacific have operating rights on that track? A. Yes, sir, that is the—what did you say, excuse me.

Q. Above the North Portland Interchange Yard on north, this one here (indicating). [746] A. Oh, yes. Union Pacific freight trains that operate between Albina and Seattle do enter this S. P. & S. main track at North Portland Junction. Our passenger trains that operate between Portland and Seattle use this same route except they do not pass through Albina, they use the S. P. & S. trackage to come out of Portland Terminal Railroad, but do use this same route north.

Q. Now, at the North Portland Junction with the S. P. & S. track there is an interlocker there? A. Yes, sir.

Q. What is the designation of that interlocker? A. That is the North Portland interlocker.

Q. Or junction? A. Yes, sir.

Q. Does this also have any speed restriction? A. Yes, but I can't tell you what the speed restriction is.

Q. When the trains operating on the track to and from the S. P. & S.—N. P. main line, have there been any delays experienced to your knowledge through this interlocker?

[747] A. It has been testified that the Union Pacific does operate five trains a day, five freight trains a day in each direction over the track that you referred to between Peninsula Junction thence through the North Portland Junction, onto the S. P. & S.—N. P. main track. There are passenger trains that operate on this, there are S. P. and, of course, N. P. & G. N. trains that operate on this main track.

Q. I think you said S. P. A. I meant the S. P. & S., N. P., G. N., passenger trains and freight trains, and it is not uncommon that there are delays at North Portland Junction on, not only our trains, but on trains of other railroads because of other trains using the track at the time. Whenever this happens to a Union Pacific train that is leaving the Albina Yard and going northbound to Seattle, Chehalis, Centralia, wherever it might be going, if it cannot get onto the S. P. & S. track it will hang back into the Peninsula Terminal territory and—

Q. (Interrupting) The junction territory? A. The junction territory.

(Continuing)—and will delay the operation using the [748] H line that was referred to earlier, or the movement following this particular train. I have, or I know of delays that have been as much as an hour, hour and twenty minutes and the like of that—

Q. (Interrupting) Just at that interlocker? A. Yes, sir.

Q. Tying up the whole main line? A. Yes, sir.

I would like to call this to your attention, this does hap-

pen, and we have an engine in the Kenton area that desires to make an interchange to the North Portland interchange tracks, he cannot make a movement on this track because of the trains setting there. This has happened many times, and this does contribute to the delay in the territory.

Q. Yes.

Now, to direct your attention back to the Albina Yard proper, as shown on Exhibit 37, would you describe a little bit of the physical limits around the yard? A. Yes; the Albina Yard is bordered on the west by the Willamette River between the yard itself and the river there are certain industries. On the east it is bordered by the bluff and the interstate highway, and there is no room for expansion in the Albina area.

Q. Now, in addition to the territory you mentioned as being served out of Albina are there industries on Swan Island which— [749] A. (Interrupting) Yes, there are industries on the Swan Island and, in fact, this area is increasing all the time, and this area is served by engines out of the north end of the Albina Yard to and from that territory.

Q. Now, the St. Johns junction line that veers off to the west at St. Johns junction shown in green, I believe you testified to the industries served in that territory? A. Yes, sir.

Q. I see. Now, there has been testimony as to the tunnel that is depicted on Exhibit 37 and the line on the opposite side known as the H line running between Kenton and Barnes, and the turnout tracks which connect these two. Could you tell me if because of the curvature of these tracks there is any restrictions in speed in using the turnout tracks? A. Yes. One of the turnouts is a nine degree turnout and the other is a seven degree turnout, and they

are restricted to 15 miles per hour, and that restriction is the same as I stated concerning the East Portland restriction. The entire train has to be handled completely through the turnout before the speed can be increased.

Q. Yes. Now, is there any speed restriction on the track between Peninsula Junction and North Portland?

A. No, sir.

Q. Is there a grade which tends to restrict the speed of trains?

[750] Q. (By Mr. Weisser) What is the grade, do you know, between the North Portland Junction and Peninsula Junction? A. No, it isn't a very heavy grade. I do not know what the grade is.

Q. Does it tend to impede train speed in anyway? A. It could.

Q. (By Mr. Weisser) Well, the trains as they depart Albina does tend in a northerly direction, then can either go due north and get onto the S. P. & S.—N. P. track, is that correct? A. Yes, sir.

Q. What other routes are available to trains leaving that way? A. They can move via the Peninsula Junction onto the Kenton line, or they can turn off and go to the Barnes Yard to Terminal 4 or use the joint S. P.—U. P. track into the Rivergate area.

[751] Q. Well, when you come down from the north, what directions can these trains operate? A. They can turn off onto the Kenton line, or into the Barnes area, or come into the tunnel to the Albina Yard.

Q. And are movements made of this nature that you just described? A. For them to go other than into the Albina Yard is unusual. When you are talking about—

you are talking about train movements, switch movements, the switch movements between North Portland Junction and the Albina do come into the Kenton area and do sometimes go into the Barnes area.

Q. Now, are there any other movements of trains or switch engines in this locality—

Mr. Wilson (interrupting): I will object again, that is too broad a question. I don't know what he means by this locality. I think the—

Mr. Weisser (interrupting): The locale of Peninsula Junction.

A. Yes, on the Kenton line, we have engines going on duty at Albina, and there are two engines on each eight-hour shift that serve the industries in this area. We have two switch engines each shift, each eight-hour shift that goes onto the Albina that does handle traffic to and from the Barnes Termi-[752] nal 4 area. These engines that work in the Kenton area do serve the industries to the west of the Peninsula Junction, and there are many moves back and forth, and this piece of track which has been designated as the H line, at the Kenton Yard, we have tracks which are used for the State Grain Inspectors for the purpose of inspecting the grain via the state which diversions are made and then it is necessary to segregate this grain as to its destination. In some cases it is necessary to handle the grain across the H line to the Barnes area for delivery to the terminal H elevators, and in some cases the grain is handled down to Peninsula Terminal and left for a pick up by northbound trains, and some cases the grain is brought into Albina Yard to be placed on other trains that might be departing for the north. There is a great deal of movement in the Peninsula Junction area because of the switch engines working in this territory, and the train movements through the territory.

Q. Now, on this line that goes through Barnes Yard into Peninsula Junction, it is service rendered to the Rivergate area? A. Yes, sir.

Q. Could you describe generally where they would be? A. Yes, the tracks take off from a point near the west end of, [753] or at the west end of the Barnes Yard, follow close by Swift Boulevard on in a westerly direction to the boundaries of the Rivergate area, from that boundary on into Ash Grove Lime and Cement and there is a track that we used to serve that industry.

Q. What other industries are located there that are served by Union Pacific?

Mr. Wilson: I think that is all in the record, I won't object.

Q. (By Mr. Weisser) Were those the industries who were shown on the exhibit tendered by Mr. Dirker yesterday? A. There are other industries that are being built close by the Ash Grove Lime and Cement, and it is my understanding that there is trackage, and that these industries can be served by use of this track from Barnes.

Q. Now, if Southern Pacific were granted rights between East Portland and North Portland, you testified that you would experience congestion with resulting delays, where would this occur? A. This would occur in the territory between St. Johns junction and Peninsula Junction, because this has been testified that this is a single track area. It has been testified earlier this morning that three out of four Union Pacific trains arriving Albina via the Kenton line are delayed as much as two hours, because of the congestion in the Albina [754] Yard in this area. These movements tend to delay the switch engine operations in this area, and we do experience overtime on our switch engines as a result of this congestion.

This is really the bottleneck of the Albina Terminal, the territory between St. Johns Junction and Peninsula Junction. This territory we have to give preferred handling to certain trains and as a result the switch engines and the lesser trains are delayed and there are overtime on switch engines, and I have found that it is not uncommon to have two hours delay on our switch engines besides the delay on the freight trains.

Mr. Wilson: Mr. Weisser, can you ask just for clarification, what witness it was who testified to these two hours delays of trains coming off the Kenton line?

The Witness: I heard it testified—

Mr. Wilson (interrupting) You said it this morning, I would like to know

The Witness: I heard it testified this morning, it was Mr. Smith who said this. However—

Mr. Wilson (interrupting): Thank you, that is all.

Go ahead.

Q. (By Mr. Weisser) What effect does the operating difficulties you experience or the operating difficulties that you experience between Peninsula Junction and St. John's Junction have, if any, on the operation of the Albina Yard? A. Well, it does have an influence on the Albina Yard, in that [755] you cannot have an even flow of traffic back and forth through the tunnel because of the congestion through the tunnel, and as I stated, it does cause overtime. Any time that a freight train arriving at Albina is delayed on the Kenton line arriving Albina, its final terminal time starts at the time it is stopped out there by a switch movement or an opposing train movement. Any time that the final terminal time starts there is an added expense put to the Union Pacific because of this condition.

* * *

Q. (By Mr. Weisser) Because of the length of the tunnel, how do your operations have to be conducted in that area? [756] A. Because of the length of the tunnel, and because of the signal arrangement on either side of the tunnel, it is necessary for this area to be open and free for movement completely through the territory because you cannot stop trains inside the tunnel because of the gaseous condition and the effect it might have on the employees. There is a signal just beyond the north portal of the tunnel near the Peninsula terminal and you have to have this route clear or you cannot start a movement into this territory. I would like to elaborate on this signal arrangement since I have mentioned it, if I may.

Mr. Wilson: I am going to object.

Exam. Shoup: Sustained. Let us have the questions and answers.

Q. (By Mr. Weisser) Are there any periods of time when the tunnel is free? A. Yes, there are periods of time, however, when I speak of the tunnel being free, I mean that the tunnel is open for operation for a period of 30 minutes or more, because it does take approximately 30 minutes or so to pass through this territory.

Mr. Wilson: What do you mean by this territory, let us make sure—

The Witness (interrupting): Between the Peninsula Terminal and St. John's Junction. Peninsula Junction and St. John's Junction, yes, sir.

[757] Q. (By Mr. Weisser) Now, directing your attention to the North Portland interchange, is there any congestion in the present operation of the North Portland interchange? A. Yes, there is congestion in this area because of the amount of traffic that moves in and out of this, and out of this interchange, and because of the movements between Peninsula Junction and the North Portland Junction.

Q. If Milwaukee and Southern Pacific were permitted access to North Portland, would this make the properties congested and cause delays? A. Yes, it would make the properties congested and cause delays, because if the Milwaukee was making interchange at the North Portland Yard and the Union Pacific crews showed up to make the pull and set out cars at the North Portland interchange track no doubt one of the crews would have to wait while the other performed their service.

Q. This applies also to Southern Pacific employees? A. Yes, yes.

Q. Now, if Southern Pacific were given trackage rights between East Portland and North Portland, could Union Pacific reduce any of the number of engines or crews that they presently operate? A. No, it would be very likely that they would have to increase the number of engines that they have operating in the Albina Yard in order to take care of further congestion that [758] they might have. And to substantiate what I am talking about, like I referred to earlier, that if we had to have a track clear for a movement through Albina Yard there would be further congestion and it would no doubt cause extra switching, extra handling of traffic in the Albina Yard, and they could not reduce any power.

Q. What about if Milwaukee were given rights into North Portland, would the Union Pacific be able to reduce the number of engines or crews it operates? A. No, sir.

Q. Now, could you point out on the Exhibit 37 where the North Portland Junction interlocker is? A. Well, it is right close to the connection of the track between Peninsula Terminal where it joints right onto the S. P. & S. main track, running in close proximity.

Q. Could anyone observe operations of the Albina Yard from that junction point? A. No, you could not see Albina Yard, the tunnel goes through a hill and I doubt if—

Mr. Wilson (interrupting): I would stipulate to that, Mr. Weisser, that you can't see from North Portland to Albina.

Q. (By Mr. Weisser) Can you see the operations of Peninsula Junction? A. Not very likely, there is almost a mile between these two points, three quarters of a mile or so, and it is very doubtful that they could see even the signal indications.

Q. (By Mr. Weisser) Has anyone from Southern Pacific ever contacted you concerning service deficiencies to North Portland? A. No, they have not contacted me.

Q. Well, concerning Exhibit No. 45 that was placed in evidence yesterday, the column on the exhibit P. T. to U. P. or S. P. & S. as shown would be the time that applies to Union Pacific, a Southern Pacific transfer train unhooked from its transfer at Albina, is that correct?

Mr. Wilson: I object to the question, this is not this witness's exhibit, it was completely explained on the record yesterday.

Exam. Shoup: Sustained.

Q. (By Mr. Weisser) The operations that take place between the time that Union Pacific obtains traffic from Southern Pacific and the time this traffic is tendered to Portland or Peninsula Terminal have been previously described in this record, have they not? A. Yes.

Q. So this would take place between the two times listed on [760] Exhibit 45, would they not? A. Yes, sir. As I understand that, the first column so far as the time is the delivery to Albina and the second time farther on over to the right is the time U. P. handles it to Peninsula Terminal Railroad.

Q. Now, in this first group of cars, on the left hand half of the exhibit, the fourth one down, CP-296497, it shows the hours involved of 169. A. Yes, sir.

Q. Which is a little bit out of the ordinary, have you attempted to determine what happened on that move? A. Yes. I looked into this matter and I found that this car arrived in Albina from the Southern Pacific on a Southern Pacific Company switching record, and this was marked Barnes spur or Joslin Manufacturing Company and the car was handled to Joslin Manufacturing at Barnes, and, however, it was found that after we spotted it at Joslin Manufacturing Company that it belonged to the West Coast Hardware Company, Hardwood Company and the Peninsula Terminal Railroad.

Q. As to the next number shown over to the far right, third one down, there is 152 hours and 30 minutes involved in the movement from Peninsula Terminal back to Union Pacific, have you tried to determine what happened in that instance? A. Yes. This car was handled to Peninsula Terminal Railroad for Shifton Company on the Peninsula Terminal Railroad, and [761] returning to Albina, moved without a waybill, and upon arrival at Albina they thought it was an empty car because there was no bill with the car and it was placed on the conditioning or cleaning tracks, it was found to be a load and after investigation was made, we found that the bill was at the Southern Pacific Brooklyn Yard and the car was forwarded, which did result in this particular delay.

Q. In this the case, then, where Southern Pacific had the bill and we had no instructions on how to handle the car? A. Yes, and I understand that the Portland Terminal Railroad did not have instructions on how to handle the car.

Q. The Peninsula Terminal you mean? A. The Peninsula Terminal Railroad, yes.

Q. Now, could you direct your attention to ear No. 22S71083, it is about the tenth one from the bottom, a movement from Peninsula Terminal to Union Pacific shows the hours involved of 167 hours and 20 minutes, did you investigate and determine what happened in that instance? A. Yes. This car arrived back into Albina, it was an empty car, it was placed on the Albina conditioning or cleaning tracks, was conditioned and it was forwarded back to the S. P. as an empty car.

Q. Now, as to other cars included on this exhibit, I will just go through some of these briefly, SP-674152, what was the situation on that car, Mr. Hardin? [762] A. This car was received in Albina on February 24, which was a Friday, and it was delivered to the Peninsula Terminal Railroad or North Portland interchange 3:50 p. m. on Sunday the 26th.

Q. Are there a number of others in a similar status where the delivery was made as part of a weekend with the date of delivery on a Sunday? A. Yes, we do not necessarily provide the same service to the interchange tracks at Peninsula Terminal Railroad on Friday night, and Saturday, and Saturday nights because of the fact that the industries do not work on those days and we do not always make deliveries on those days.

Mr. Wilson: Could you just tell us which cars for the record?

Q. (By Mr. Weisser) Would this include car No.—

Mr. Wilson (interrupting): Just ask the witness to give us the numbers.

Q. (By Mr. Weisser) Give us the numbers, Mr. Hardin, if you would.

Mr. Wilson: Then, the Commission can take official notice of whether those are Fridays, or Saturdays, or Sundays.

A. S. P. 674132, S. P. 541281, S. P. 340428, S. P. 214762, S. P. 176 348, N. R. G 30156, S. P. 226, excuse me, 222043.

Q. (By Mr. Weisser) Now, if the Commission should deny the S. P. application could Union Pacific furnish adequate service [763] to the Rivergate area through Peninsula Terminal?

Mr. Wilson: I will object, the question has been asked and answered by other witnesses, the applicant's witnesses.

Exam. Shoup: Overruled, the witness may answer.

A. Yes, rephrase the question, give me the question.

Exam. Shoup: Next question.

Q. (By Mr. Weisser) Could you explain your answer, what type of service would be offered if Peninsula Terminal is used as a vehicle to get into Rivergate and Rivergate should develop as we have heard on this record?

Mr. Wilson: May I ask that you say what kind of service, are you referring to service by Peninsula Terminal, or are you referring to service between where Peninsula Terminal is on Southern Pacific at East Portland?

That is the only thing.

Mr. Weisser: They will take the relevant one, the one between Albina Yard and Peninsula Terminal.

The Witness: Yes, they can furnish service into the territory and will furnish service as required, or the demand might require.

Q. (By Mr. Weisser) At the present time is the service meeting the demand for service? A. Between Albina and—

Q. (Interrupting) And Peninsula.

A. Yes, yes. I have not had any complaints about the service. [764] Several of the examples that are shown on

this report for Exhibit 45 as delays, the cars arrived as empties in the Peninsula Terminal Railroad ahead of the time that the cars were ordered.

Q. What car numbers are those on Exhibit 45? A. S. P. 541679—

Q. (Interrupting) What date was that car ordered? A. Car was ordered on fourth month and the 14th day for the loading, the 4th and the 24th, and was furnished the 4th day, 4th month, and the 18th day or six days ahead of loading time.

Q. Have you other examples? A. A. D. M. 8080, arrived Portland—Peninsula Terminal Railroad on 4—2, it was ordered for 4-24 and it was furnished 4-22. The N. R. G. 30156 was ordered 4-18, and the car was furnished 4-16.

Q. As to car S. P. 210795, is there an error in Exhibit 45? A. Yes.

Q. Could you explain what it is? A. The time that the car arrived from U. P. to Portland Terminal Railroad was 3-6-67 at 5:30 a. m. You will note that this exhibit shows the car was set from Portland Terminal Railroad to U. P. on that particular day. Found that the car was available and picked up on 3-8-67, was delivered to the S. P. at 3-9-67, or 29 hours and 15 minutes instead of 65 hours and 25 minutes.

[765] Q. Now, in the column on Exhibit 45 that shows P. T. to U. P. or S. P. & S., have you determined what time this represents?

Mr. Wilson: I don't understand the question.

Q. (By Mr. Weisser) Is that the time that cars are spotted on the Peninsula Terminal trackage? A. It is my understanding that the time as shown in the column P. T. to U. P. or S. P. & S. is the time that the Peninsula Terminal Railroad Company sets that car to the interchange track to be picked up.

Q. Then switching service is offered on a set time basis or more or less a schedule at 6:30 a. m. or 1:30 p. m. as has been previously testified to? A. Yes, sir.

Q. That is when the pick ups were made?

Mr. Wilson: This is a U. P. witness, isn't it, not a S. P. witness.

You don't have any personal knowledge of that, do you, the pick up times of S. P. & S.?

Mr. Weisser: This is U. P. traffic.

Mr. Wilson: I thought your question was to S. P. & S. I think the witness misunderstood you, too.

Q. (By Mr. Weisser) Did you understand my question?

A. I understood what I thought you meant was, as has been testified to that there is more or less a set time for the Union Pacific to pick up traffic at the Peninsula Terminal [766] Railroad, if that was your question the answer is yes.

Q. What are those times? A. 1:30 to 2 o'clock p. m.—

Mr. Wilson (interrupting): They are in the record.

Mr. Weisser: O. K., you may cross examine.

CROSS EXAMINATION

Q. (By Mr. Wilson) Mr. Hardin, were you in the hearing room when Mr. Baker the general manager of Union Pacific testified? A. Yes, sir.

Q. You heard his testimony as to the number of train movements, and switch cuts, and so forth which you read into the record? [767] A. Yes, sir.

Q. Am I correct that that is what you base your general testimony on today as to congestion? A. Yes, sir.

[770] Q. You do not disagree with your general manager that it takes, when he testified that it takes an average of 30 hours to move these cars from Albina to Peninsula, you don't differ with that, do you? A. No, I don't differ with that.

• • •

PETITION OF CROWN ZELLERBACH CORPORATION FOR RECONSIDERATION, AND REQUEST FOR FURTHER HEARING TO INTRODUCE NEW EVIDENCE.

• • •

"EXHIBIT A"

UNION PACIFIC RAILROAD COMPANY

DEPARTMENT OF TRAFFIC

1416 DODGE STREET OMAHA, NEBRASKA 68102

W. F. K.

MAY 12 1969

Re: F. PETTIGREW

Vice President

At Salt Lake City

May 8, 1969

Mr. O. H. Stieber, G. T. M.

Crown Zellerbach Corporation

#1 Bush Street

San Francisco, Calif. 94119

Dear Ollie:

In connection with our recent meeting in Chicago with respect to service which can be afforded to your new operation in Rivergate on traffic interchanged with the Southern Pacific:

You will recall at that time I advised that a car ordered from the Southern Pacific before noon on Monday should be delivered to us at Albina prior to 6:00 A. M. on Tuesday for handling to Rivergate by way of Barnes Yard and spotted early Wednesday morning. Presumably the car would be loaded, billed and released by Wednesday afternoon and ready for pick-up by the Southern Pacific at Albina Yards Thursday afternoon, leaving that evening or early the following morning.

While we intend to maintain a car pool for your loading at either Rivergate or Albina after your operation is under way, the foregoing is the service that would pertain assuming daily releases up to 25 cars. If your releases are in excess of 25 cars, they would be pulled, for example, on a Monday evening, arrive Albina prior to 6:00 A. M., Tuesday, for delivery to the Southern Pacific who would pick up at either 9:00 A. M. or 1:00 P. M. the same day and leave their Brooklyn Yard Tuesday evening. The reason the service can be bettered when an excess of 25 cars is tendered is that we would run from Rivergate to Albina special, otherwise our crews perform additional work enroute.

This apparently is the best that can be consistently maintained at the present time, although after the operation is in effect, there is always the possibility that further refinements can be made. If there are additional details that you need or if I can be of any further assistance, I would appreciate such advice.

Warm personal regards.

Sincerely,

(Illegible.)

cc - Mr. F. E. Kriebel, V. P.-T.

Southern Pacific Company

65 Market Street

San Francisco, California 94105

SERVICE DATE
OCTOBER 31, 1969

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 24th day of October, 1969.

Finance Docket No. 24679¹

SPOKANE, PORTLAND & SEATTLE RAILWAY
COMPANY AND UNION PACIFIC RAILROAD
COMPANY—CONTROL—PENINSULA
TERMINAL COMPANY

Upon consideration of the record in the above-entitled proceeding, of the petitions of Southern Pacific Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Port of Portland, The Public Utility Commissioner of Oregon and of Crown Zellerbach Corporation, for reconsideration of the report, 334 I.C.C. 419, and order of the Commission, Division 3, dated June 6, 1969, including various requests for further hearing and oral argument, and of joint reply thereto by applicants; and

It appearing, That the material matters set forth in the petitions have been considered by the Division and discussed in its report, that the decision is based on adequate findings, supported by the record, that there has been presented no error of fact or law with respect to the matters complained of by petitioners, and that no showing has been made warranting reconsideration, further hearing or oral argument:.

1. This proceeding also embraces Finance Docket No. 24890, Southern Pacific Co. Common Use of Terminal Facilities—Peninsula Terminal Co., and Finance Docket No. 24891, Southern Pacific Co. —Common Use of Terminal Facilities—Union Pacific Railroad Co.

It is ordered, That said petitions be, and they are hereby, denied, and that the order of the Division dated June 6, 1969, be, and it is hereby, made effective 20 days from the date of service of this order.

By the Commission, Division 3, acting as an Appellate Division,

H. NEIL GARSON
Secretary

(SEAL)

SERVICE DATE
NOVEMBER 26, 1969

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of November, 1969.

Finance Docket No. 24679

SPOKANE, PORTLAND & SEATTLE RAILWAY
COMPANY AND UNION PACIFIC RAILROAD
COMPANY—CONTROL—PENINSULA
TERMINAL COMPANY

Finance Docket No. 24890

SOUTHERN PACIFIC CO.—COMMON USE OF
TERMINAL FACILITIES—PENINSULA
TERMINAL CO.

Finance Docket No. 24891

SOUTHERN PACIFIC CO.—COMMON USE OF
CERTAIN TERMINAL FACILITIES—
UNION PACIFIC CO.

Upon consideration of the record in the above-entitled proceedings, including the petitions of Southern Pacific Company, Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, Public Utility Commission of Oregon, The Port of Portland, and Crown Zellerbach Corporation, filed November 12, November 13, November 17, November 12, and November 17, 1969, respectively, under the provisions of section 1.101(a)(4) of the General Rules of Practice before the Commission for a finding that an issue of general transportation importance is involved; and

It appearing, That no issue of general transportation importance is involved in these proceedings:

It is ordered, That the said petitions be, and they are hereby, denied; and

It is further ordered, That the order of June 6, 1969, by Division 3, shall be effective 20 days from the date this order is served.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

SERVICE DATE
DECEMBER 10, 1969

ORDER**INTERSTATE COMMERCE COMMISSION**

Finance Docket No. 24679

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY—CONTROL—
PENINSULA TERMINAL COMPANY

Finance Docket No. 24890

SOUTHERN PACIFIC CO.—COMMON USE OF TERMINAL
FACILITIES—PENINSULA TERMINAL CO.

Finance Docket No. 24891

SOUTHERN PACIFIC CO.—COMMON USE OF CERTAIN TERMINAL
FACILITIES—UNION PACIFIC CO.

POSTPONEMENT OF EFFECTIVE DATE OF ORDER

Present: VIRGINIA MAE BROWN, Chairman, to whom the
above matter, which is the subject of this order, has been
assigned for action thereon.

Upon consideration of the filing on or about December 3,
1969, of a suit, Civil Action No. 69-696, *Port of Portland,*
et al. v. United States, et al., in the United States District
Court for the District of Oregon, to annul and set aside the
order of the Commission, Division 3, of June 6, 1969, in the

above-styled proceedings, the effective date of which was heretofore established as December 16, 1969, and which suit also seeks an order of the Court temporarily restraining the Commission from implementing said order on December 16, 1969; and of the request of the Court that the Commission itself postpone the above effective date of said order pending determination by the Court of the merits of the Commission's order of June 6, 1969; and good cause appearing therefor:

It is ordered, That the effective date of the order of Division 3 of June 6, 1969, in the above-styled proceedings, heretofore established to be December 16, 1969, be, and it is hereby, postponed until further order of the Commission.

Dated at Washington, D. C., this 8th day of December, 1969.

BY THE COMMISSION:

CHAIRMAN BROWN.

H. NEIL GARSON

Secretary

(SEAL)

Endorsed:
 Filed Sept. 1, 1970
 George E. Juba, Clerk
 By M. Hartzell
 Deputy

OGLESBY H. YOUNG
 800 Pacific Building
 Portland, Oregon 97204
 Telephone: 226-6151

W. HARNEY WILSON
 One Market Street
 San Francisco, Calif. 94105
 Telephone: (415) 362-1212

*In The United States District Court
 For the District of Oregon
 Civil Action No. 69-696*

Port of Portland, Sam R. Haley, Public
 Utility Commissioner of Oregon, Com-
 mission of Public Docks of the City of
 Portland, Oregon

Plaintiffs,

v.

The United States of America and Inter-
 state Commerce Commission,

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Port of Portland, Sam R. Haley, Public Utility Commissioner of Oregon, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and Southern Pacific Transportation Company, plaintiffs, hereby appeal to the Supreme Court of the United States from the order and judgment dismissing the complaint, entered in this action of July 9, 1970.

2

This appeal is taken pursuant to 28 U.S.C. § 1253.

Oglesby H. Young
Counsel for Southern Pacific
Transportation Company
800 Pacific Building
Portland, Oregon 97204

W. Harney Wilson
Counsel for Southern Pacific
Transportation Company
One Market Street
San Francisco, California 94105

Samuel P. Delisi
Counsel for Port of Portland
530 Grant Building
Pittsburgh, Pennsylvania 15219

Lofton L. Tatum
Counsel for Port of Portland
15th Floor Standard Plaza
Portland, Oregon 97204

Dale T. Crabtree
Assistant Attorney General of
the State of Oregon
103 Public Service Building
Salem, Oregon 97310

Warren H. Ploeger
Counsel for Chicago, Milwaukee,
St. Paul & Pacific Railroad
609 White Building
Seattle, Washington 98101

By W. Harney Wilson

CERTIFICATE OF SERVICE

I, W. HARNEY WILSON, the attorney for plaintiff Southern Pacific Transportation Company, hereby certify that on this first day of September 1970, I served a true copy of the foregoing Notice of Appeal to the Supreme Court of the United States by mailing the same in an envelope duly addressed with airmail postage prepaid to the following:

Solicitor General

Department of Justice

Washington, D.C. 20530

Interstate Commerce Commission

Washington, D.C. 20423

Manny H. Smith, Attorney

Interstate Commerce Commission

Washington, D.C. 20423

Randall B. Kester

John F. Weisser, Jr.

Walter J. Cosgrave

Union Pacific Railroad Company

628 Pittock Block

Portland, Oregon 97205

Richard Devers

Davies, Biggs, Strayer, Stoel

and Boley

1410 Yeon Building

Portland, Oregon 97204

Sidney I. Lezak

United States Attorney

District of Oregon

United States Courthouse

Portland, Oregon 97207

Fritz R. Kahn
Assistant General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

~~R. Paul Tjossem~~
~~Roger J. Crosby~~
Burlington Northern Lines
426 American Bank Building
Portland, Oregon 97205

John H. D. Wigger
Department of Justice
Room 3410
Washington, D.C. 20530

W. Harney Wilson

PORT OF PORTLAND, *et al.*,
Appellants,

v.

UNITED STATES.

No. 903

Appeal from the United States District Court for the
District of Oregon.

Feb. 22, 1971. In this case probable jurisdiction noted.

(91 S. Ct. 865)

Supreme Court of the United States

No. 903 -- , October Term, 19 70

Port of Portland, et al.,

Appellants,

v.

United States, et al.

**APPEAL from the United States District Court
for the District of Oregon.**

**The statement of jurisdiction in this case
having been submitted and considered by the Court,
probable jurisdiction is noted.**